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Monthly Bulletin

The Ontario Labour-Management
Arbitration Commission

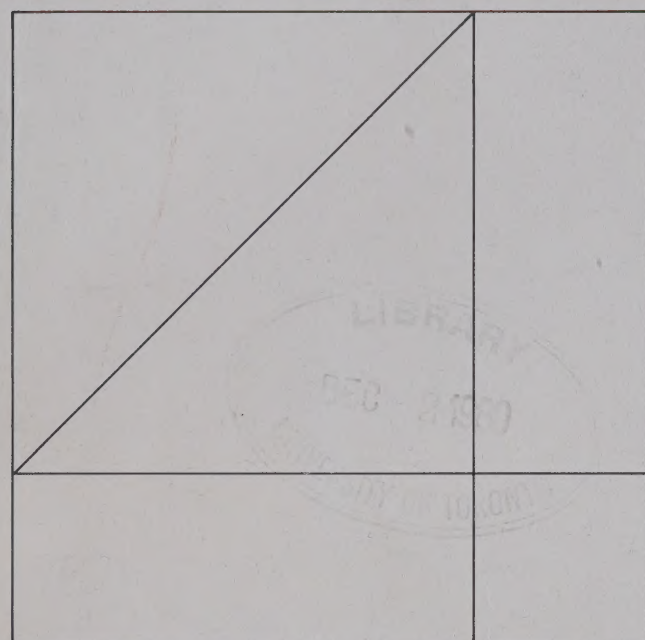
His Honour Judge Walter Little, Chairman
D.W. Rose, QC, Counsel and Registrar

The Ontario Labour-Management
Arbitration Commission
Ontario Ministry of Labour
400 University Avenue, 14th Floor
Toronto, Ontario
M7A 1T7

Hon. John P. MacBeth, QC, Minister
Robert D. Johnston, Deputy Minister

March, 1975
Volume 4, Number 12

Published monthly
by the Commission as a service to persons
involved in labour-management
arbitrations.



In Memoriam

The Commission has noted, with regret, the passing, during the month of February, 1975, of Doctor Louis Fine and Alex. C. Thompson, Esq., QC. Doctor Fine was on the Commission's register of approved arbitrators and Mr. Thompson had received "tentative" approval.

Arbitrators

The following person has been approved as chairman of boards of arbitration or single arbitrator pursuant to The Ontario Labour-Management Arbitration Commission Act and Ontario Regulation 635:

Swan, Professor Kenneth P., Faculty of Law, Queen's University, Kingston, Ontario, K7L 3N6; telephone (613) 547-5803.

The qualifications of the following person are such that he meets the criteria laid down by the Commission, making him a suitable person to sit as sole arbitrator or chairman of boards of arbitration, except that the criterion of mutual acceptability to unions and management has not been fully demonstrated. Although he may have had arbitration experience, he has not been mutually agreed upon a sufficient number of times in the past to enable him to meet the foregoing criterion necessary to entitle him to be accredited for inclusion on panels. As soon as he meets this criterion he will be considered for full accreditation.

Roach, Professor J. E., Faculty of Law, (Common Law Section), University of Ottawa, Ottawa, Ontario K1N 6N5; telephone (613) 231-5846

Change of Address

The following change of address should be noted: Johnston, Professor D. L., Dean, Faculty of Law, The University of Western Ontario, London, Ontario, N6A 3K7; telephone (519) 679-6797.

Awards

The following awards were filed with the Commission during the month of December, 1974, under Section 6(2) of Ontario Regulation 635, R.R.O. 1970.

The summary was prepared at the Faculty of Law, Queen's University, under the supervision of C. G. Simmons, B.A., B.C.L., LL.M., and D. D. Carter, B.A., LL.B., B.C.L.

*Indicates award to be reported in full or in part in *Labour Arbitration Cases*.

Arbitrability

Alternative procedure for claims of wage inequality — procedure not followed; grievance dismissed without prejudice to a renewed claim. *Re International Nickel Company of Canada Limited and United Steelworkers of America; Eveline grievance*, November 21, 1974. Majority: O'Shea, D. J. M. Brown — ten pages; dissent: Guillet — three pages; addendum: D. J. M. Brown — one page. (1)

Bargaining Unit

Engineer in training not included in bargaining unit — collective agreement excluding all graduate engineers whether registered or not; grievance dismissed. *Re Corporation of the City of Guelph and Canadian Union of Public Employees, Local 973; union grievance re Hearn*, December 6, 1974. H. D. Brown, Williamson, Pudge — ten pages. (2)

Scope — new job classification falling within bargaining unit; grievance upheld. *Re Sheaffer Pen Company and International Association of Machinists, Local Lodge 2315; union grievance*, December 2, 1974. Curtis — 12 pages. (3)

Classification

New classification: reassignment of duties — new classification properly established. *Re Motor Wheel Corporation of Canada Limited and United Automobile Workers, Local 127; policy grievance*, November 28, 1974. Hinnegan — 11 pages. (4)

New classification formed by amalgamating two existing jobs — change permissible. *Re Motor Wheel Corporation of Canada Limited and United Automobile Workers, Local 127; policy grievance*, December 9, 1974. Hinnegan — seven pages. (5)

Performing function of a higher classification — higher rate to be paid. *Re Falconbridge Nickel Mines Limited and Sudbury Mine, Mill and Smelter Workers' Union, Local 598; Gies grievance*, November 28, 1974. Majority: O'Shea, LaChance — seven pages; dissent: Sanderson. (6)

Reclassification of employees — core functions changed; no violation of collective agreement; grievance dismissed. *Re Windsor Public Utilities Commission and International Brotherhood of Electrical Workers, Local 911; group grievance*, December 3, 1974. Majority: Adams, Gress — 34 pages; dissent: A. J. Roberts. (7)*

Collective Agreement

Agreement to revise seniority provisions — not a revision of collective agreement because of lack of written memorandum of agreement; grievance allowed. *Re Imperial Tobacco Products (Ontario) Limited and Tobacco Workers International Union, Local 323; group grievance*, December 5, 1974. O'Shea — 18 pages. (8)

Letter signed only on behalf of company; letter not signed by both parties and not incorporating by reference — not a collective agreement. *Re Canadian Rock Salt Company Limited and United Automobile Workers, Local 195; policy grievances 283, 284*, December 10, 1974. Gorsky — six pages. (9)

Damages

Calculation of damages where unjust discharge — determination of actual loss. *Re Board of Governors of the Riverdale Hospital and Canadian Union of Public Employees, Local 79; Henry grievance*, November 28, 1974. Supplementary majority award: H. D. Brown, Tate — nine pages; dissent: Rogers — four pages. (10)* See also Vol. 4,6 (14)

Discharge

Absence without leave — discharge justified. *Re Hendrie and Company Limited and Canadian Brotherhood of Railway, Transport and General Workers; Gills grievance*, December 11, 1974. Majority: O'Shea, McComb — 14 pages; dissent: Posen — four pages. (11)

Absence without leave — grievor reasonably believing medical reasons justified absence; reinstatement ordered. *Re Ford Motor Company of Canada Limited and United Automobile Workers, Local 200; Beneteau grievance*, December 4, 1974. Palmer — eight pages. (12)

Culminating incident: absenteeism related to problem with alcohol — company attempted to assist grievor; discharge justified. *Re Canadian Rock Salt Company Limited and United Automobile Workers, Local 195; Ackley grievance*, December 17, 1974. Gorsky — ten pages. (13)

Culminating incident: failure to advise company on absence — review of record showing discharge justified. *Re Dominion Road Machinery Company Limited and International Association of Machinists and Aerospace Workers, Lodge 1863; Kerr grievance*, November 29, 1974. Majority: Hinnegan, Loucks — five pages; dissent: Wren — four pages; addendum: Hinnegan — two pages. (14)

Culminating incident: indecent exposure on company premises — discharge justified. *Re Atomic Energy of Canada Limited and Local FFF, Firefighters Association of Atomic Energy of Canada Limited; Desjardins grievance*, November 28, 1974. Majority: H. D. Brown, Healy — 23 pages; dissent: Assaly — five pages. (15)

Culminating incident: speed limit violation — discharge justified. *Re Holmes Foundry Limited and United Automobile Workers, Local 456; Topol grievance*, December 23, 1974. Hinnegan — seven pages. (16)

Failure to report suspension of driver's licence; culminating incident — discharge justified; company directed to review any job application by grievor in four months' time. *Re Brewers Warehousing Company Limited and United Brewers' Warehousing Workers' Provincial Board; Cummings grievance*, December 11, 1974. Curtis — seven pages. (17)

Instigating illegal strike — discharge justified. *Re Canadian Tyler Refrigeration Limited and United Steelworkers, Local 6585; Hannah grievance*, December 5, 1974. Shime — nine pages. (18)*

Insubordination coupled with alleged customer complaints — grievor's conduct justified in circumstances; reinstatement with compensation ordered. *Re Country Ready Mix Limited and Teamsters' Union, Local 230; Pacello grievance*, November 27, 1974. O'Shea, Thomson, Robinson — ten pages. (19)

Insubordination, obscene language, threatening with a dangerous weapon — mitigating factors: good work record, isolated incident, provocation; ten-month suspension substituted on condition that apology be given. *Re Galco Food Products Limited and Amalgamated Meat Cutters and Butcher Workmen of North America, Local P-1105; Mano grievance*, December 16, 1974. Majority: Beatty, Walsh — 23 pages; dissent: Tarasuk — 14 pages (20)*

Insubordination: refusal of work assignment — discharge not justified; reinstatement without compensation but retention of seniority. *Re City of Ottawa and Ottawa-Carleton Public Employees Union, Local 503; Carisse grievance*, November 20, 1974. Majority: Godin, Scott — 18 pages; dissent: Kelley — two pages. (21)

Loss of seniority because of absence from work — grievor considered probationary employee; discharge justified. *Re J. Harris and Sons Limited and International Association of Bridge, Structural and Ornamental Iron Workers, Shopmen's Local 734; Morrealle grievance*, November 12, 1974. Majority: Palmer, McKillop — seven pages; dissent: Chappell. (22)

Right to union representation at time of discharge denied — failure to fulfil mandatory condition; discharge void *ab initio*; reinstatement with compensation and retention of seniority. *Re York University and Canadian Union of Public Employees, Local 1356; Day grievance*, December 3, 1974. Majority: O'Shea, Jones — 12 pages; dissent: Tarasuk — three pages. (23)

Short-service employee — less rigorous standard of just cause applicable; reinstatement without compensation because of grievor's limited seniority. *Re International Nickel Company of Canada Limited and United Steelworkers of America, Beaudette grievance*, October 4, 1974. Palmer, Heintzman, Keck — nine pages; addendum: Heintzman — one page. (24)*

Unsatisfactory work performance based on past incidents of which employer had notice — double jeopardy; discharge unjustified; reinstatement with compensation awarded. *Re Leisure World Nursing Homes Limited and Service Employees Union, Local 204; Osborne grievance*, November 29, 1974. Majority: Adams, Wren — 22 pages; dissent: Farrar. (25)

Discipline

Insubordination: refusal of work assignment — illness alleged but not proven; two-day suspension justified. *Re International Nickel Company of Canada Limited and United Steelworkers of America; Comeau grievance*, December 4, 1974. Majority: H. D. Brown, Stone — 12 pages; dissent: Guillet. (26)

Failure to report to work upon expiry of leave of absence — legitimate personal reasons; period of leave granted unreasonable; no just cause for discipline. *Re Canada Valve Limited and International Molders and Allied Workers, Local 279; Di Battista grievance*, December 5, 1974. Majority: O'Shea, Wohl — 11 pages; dissent: Sanderson — three pages. (27)

Illegal walk-out by union officials — working conditions dangerous to health; one-day suspension for first day justified, further suspension for second day unjustified. *Re Robson-Lang Leathers Limited and Canadian Food and Allied Workers, Local 205L; Bryant et al grievances*, December 4, 1974. Majority: Dunn, Paabor — 18 pages; dissent: Borden — four pages; memorandum: Paabor — one page. (28)

Insubordination: refusal to allow search of lunch pail by security guard — clear authority not present; grievances allowed; written reprimand to be removed from records. *Re Canadian Rock Salt Company Limited and United Automobile Workers, Local 195; Baltzer et al grievances*, December 13, 1974. Gorsky — 13 pages. (29)

Intoxication while on job — suspension justified. *Re Canadian Tyler Refrigeration Limited and United Steelworkers, Local 6585; Laverdiere grievance*, December 15, 1974. Shime — four pages. (30)

Unauthorized absence during working hours — two-day suspension justified. *Re Motor Wheel Corporation of Canada Limited and United Automobile Workers, Local 127; Sereida, Faubert grievances*, December 5, 1974. Hinnegan — three pages. (31)

(1) Unauthorized distribution of printed material on company premises — suspension justified; (2) failure to report for work — employee not aware of direction to report; suspension substituted for discharge. *Re RCA Limited and International Union of Electrical, Radio and Machine Workers, Local 523; Britnell grievances*, October 28, 1974. Majority: Hinnegan, Morrissey — ten pages; dissent: Healy — two pages. (32)

Unauthorized absence from work station — three-day suspension justified. *Re Liquid Carbonic Canada Limited and United Steelworkers of America, Local 12998; Arsenault grievance*, December 10, 1974. Majority: Anderson, Winkler — seven pages; dissent: Grasso. (33)

Unauthorized personal use of long distance telephone equipment — no intent to defraud company; two-day suspension substituted. *Re Canadian National Railway Telecommunications Union, Division 43; Kelly grievance*, October 18, 1974. Majority: Rayner, Dinsdale — seven pages; partial dissent: Pethick — four pages. (34)

Equal Pay for Equal Work

Adjudication under *Female Employees Equal Pay Act*, S.C. 1956, c. 38 — “work” referring to accumulation of skills, not just matters dealt with by employee; compensation awarded. *Re Bell Canada and Harris, Kennedy, complainants*, October 30, 1974. Palmer — 20 pages. (35)*

Estoppel

Collateral agreement relating to seniority — estoppel not applicable; grievance dismissed. *Re Corporation of the City of North Bay Professional Fire Fighters' Association, Local 284; group grievance*, November 21, 1974. Final award: H. D. Brown — 12 pages. (36) See also Vol. 4, 7(1)

Settlement of previous cases involving similar issue — settlement binding on employer; grievances allowed. *Re Motor Wheel Corporation of Canada Limited and United Automobile Workers, Local 127; Martin et al grievances*, December 9, 1974. Hinnegan — five pages. (37)*

Evidence

Standard of proof — balance of probabilities test requiring substantial and credible evidence on which to base a decision. *Re Atomic Energy of Canada Limited and Local FFF, Firefighters Association* — see (15), *supra*, (38)

Grievance Procedure

Failure to take grievance to body designated in collective agreement — union acted reasonably after change to regional government in turning to Regional Council as most likely body to act for the employer, but failed to comply with time limits prescribed. *Re Regional Municipality of Hamilton-Wentworth and Nurses' Association Macassa Lodge; Cunningham grievance*, November 20, 1974. Majority: Kruger, Noble — 11 pages; partial dissent: Walsh — two pages. (39)

Timeliness: time limits directory only; grievance arbitrable. *Re Sheaffer Pen Company and International Association of Machinists* — see (3), *supra*. (40)

Union grievance on behalf of discharged employee — union cannot bring grievance to seek reinstatement and damages for an individual employee; declaratory relief also unavailable. *Re Gates Rubber of Canada Limited and United Rubber Workers of America, Local 733; policy grievance*, October 28, 1974. Majority: Palmer, Storie — six pages; dissent: Hoover. (41)*

Hours of Work

Guaranteed work-week — provision only applying when employee scheduled to work five days; no violation of collective agreement; grievance dismissed. *Re Morrison-Lamothe Foods Limited and Bakery and Confectionery Workers' International Union, Local 264; policy grievance*, December 11, 1974. Majority: H. D. Brown, Filion — seven pages; dissent: Reid. (42)

Illness

Misunderstanding over release of medical records relating to grievor's ability to return to work: whether compensation required for consequent delay in return — no evidence that grievor was capable of working at that time; compensation denied. *Re International Nickel Company of Canada Limited and United Steelworkers; Cooling grievance*, December 4, 1974. Shime, Cook, Guillet — four pages; addendum: Guillet — one page. (43)

Job Evaluation

Evaluation of employer challenged — no violation of collective agreement found; grievance dismissed. *Re Canadian Westinghouse Company Limited and United Electrical, Radio and Machine Workers, Local 504; policy grievance*, October 21, 1974. Majority: Palmer, Pyle — 11 pages; addendum: Pyle — one page; dissent: Thornley — five pages. (44)

Improper ranking of job classification alleged — no evidence of inconsistent application of job evaluation techniques or that grieved job is improperly ranked in relation to undisputed job; grievance dismissed. *Re Westinghouse Canada Limited and United Electrical, Radio and Machine Workers, Local 549; policy grievance*, October 15, 1974. Majority: Palmer, Morley — eight pages; dissent: Thornley — two pages. (45)

Standards: (1) change in incentive standards by company permissible; (2) calculation: errors in calculation to be corrected by company. *Re American-Standard and International Brotherhood of Pottery and Allied Workers, Local 231; Hnatow grievance*, November 29, 1974. Curtis, Healy, Armstrong — four pages. (46)

Laches

Unreasonable delay in invoking arbitration clause — grievance dismissed. *Re Regional Municipality of Hamilton-Wentworth and Nurses' Association Macassa Lodge* — see (39), *supra*. (47)

Lay-off

Lack of notice — grievance allowed; entitlement to one week's pay in lieu of notice. *Re M. Loeb Limited (K-Mart Food Store) and Retail, Wholesale and Department Store Union, Local 579; Koch et al grievance*, December 12, 1974. Majority: H. D. Brown, Prudhomme — 12 pages; dissent: Forbes. (48)

Plant shutdown — not a lay-off within the definition of the collective agreement. *Re Ferranti-Packard Limited and United Electrical, Radio and Machine Workers of America, Local 525; union grievance*, October 30, 1974. Majority: Roberts, Morley — nine pages; dissent: Thornley — five pages. (49)

Leave of Absence

Refusal of employer to grant leave — refusal unreasonable; grievance allowed. *Re Dominion Hardware Stores Limited and Retail, Wholesale and Department Store Union, Local 579; McColeman grievance*, December 20, 1974. Ferguson — 21 pages. (50)

Lock-out

Plant shutdown — not a lock-out within definition of *The Labour Relations Act*. *Re Ferranti-Packard Limited and United Electrical Workers* — see (49), *supra*. (51)

Management Rights

Extension of rule governing wearing of safety glasses — no requirement to negotiate with union what designated areas subject to rule. *Re Ford Motor Company of Canada Limited and United Automobile Workers, Local 200; policy grievance*, December 4, 1974. Palmer — six pages. (52)

Overtime

Distribution — unclassified work distributed according to agreement; grievance dismissed. *Re Motor Wheel Corporation of Canada Limited and United Automobile Workers, Local 127; Bourdeau et al grievance*, November 25, 1974. Hinnegan — six pages. (53)

Distribution: assignment to person in another classification alleged — person within same classification; grievance dismissed. *Re Kelsey-Hayes Canada Limited and United Automobile Workers, Local 636; Trottier grievance*, December 16, 1974. Ferguson — seven pages. (54)

Distribution: work performed by more than one classification — no violation of agreement; grievance dismissed. *Re S.K.D. Manufacturing Company Limited and United Automobile Workers, Local 89; D'Alimonte grievance 74-4*, November 11, 1974. Stewart — 13 pages. (55)

Existence of overtime; temporary assignment of employee from other department during regular shift — no scheduling of overtime; grievance dismissed. *Re International Nickel Company of Canada Limited and United Steelworkers; anonymous grievor*, December 2, 1974. Majority: Shime, Filion — seven pages; dissent: Guillet. (56)

Memorandum of agreement relating to remedial relief. *Re Fabricated Metals and Stampings Limited and United Automobile Workers, Local 222; Harris grievance*, December 9, 1974. McCulloch — four pages; addendum to award reported in Vol. 4, 10(30). (57)

Notification: company failing to make reasonable effort to notify grievor — grievor entitled to full compensation. *Re Motor Wheel Corporation of Canada Limited and United Automobile Workers, Local 127; Titus grievance*, December 9, 1974. Hinnegan — four pages. (58)

Obligation to schedule — no obligation to schedule overtime even if work is available. *Re Municipality of Metropolitan Toronto and Canadian Union of Public Employees, Local 43; group grievance*, November 7, 1974. Majority: Adams, Perron — 14 pages; dissent: Tate. (59)

Remedy where improper assignment — proper remedy in circumstances is to make up lost overtime one-half by way of wages, one-half by way of equalized overtime. *Re General Aviation Services Limited and International Association of Machinists and Aerospace Workers, Lodge 717; Filippo grievance*, December 10, 1974. Andrews — seven pages. (60)

Promotion

Qualifications — grievor not satisfying conditions; grievance dismissed. *Re Northern Electric Company Limited and United Automobile Workers, Local 1535; Marshall grievance*, December 3, 1974. Palmer — seven pages. (61)

Reporting Pay

Shift cancellation — entitlement depending on whether employees reasonably reported for work without previous notification. *Re Dominion Chain Company Limited and International Association of Machinists; group grievance*, November 29, 1974. Interim award: Adams, Ellis, Wren — 20 pages. (62)

Retirement

Compulsory retirement: policy unilaterally established by the company — not a matter subject to the collective agreement; grievance dismissed. *Re General Freezer Limited and United Steelworkers of America, Local 7455; Fruhwirth grievance*, December 18, 1974. O'Shea — 14 pages. (63)*

Seniority

Effective date for departmental seniority — date of hiring, not date of transfer to department; grievance dismissed. *Re Flamingo Pastries Limited and Milk and Bread Drivers, Dairy Employees, Caterers and Allied Employees, Teamsters Local 647; Ross grievance*, November 26, 1974. Majority: Beatty, Houck — 14 pages; dissent: Thomson — to follow. (64)

Loss of seniority after unauthorized failure to report — loss of seniority not synonymous with discharge or reversion to probationary status; reinstatement ordered. *Re Canadian Tyler Refrigeration Limited and United Steelworkers of America, Local 6585; anonymous grievor*, December 5, 1974. Shime — eight pages. (65)*

Loss of seniority because of absence from work — grievor considered to be probationary employee; discharge justified. *Re J. Harris and Sons Limited and International Association of Bridge, Structural and Ornamental Iron Workers* — see (22), *supra*. (66)

Qualifications where lay-off — grievors not of equal ability; grievance dismissed. *Re Council of Printing Industries of Canada on behalf of Photo Engravers and Electrotypers Limited and Toronto Printing Pressmen and Assistants' Union Number 10; union grievance re Eales, White*, December 13, 1974. Majority: H. D. Brown, Dinsdale — eight pages; dissent: Young. (67)

Reduction in work force: senior, inexperienced employees demoted below junior, experienced employees to ensure requirements of operations — no violation of agreement. *Re Falconbridge Nickel Mines Limited and Sudbury Mine, Mill and Smelter Workers' Union, Local 598; Lescheshin et al grievances*, November 29, 1974. Final majority award: H. D. Brown, Winkler — 13 pages; dissent: LaChance — five pages. (68)* See also Vol. 4, 5 (41), (46).

Strike

Instigating illegal strike — discharge justified. *Re Canadian Tyler Refrigeration Limited and United Steelworkers* — see (18), *supra*. (69)*

Responsibility of union — union failing to respond reasonably or to renounce employees' conduct; company entitled to compensation. *Re Algoma Steel Corporation Limited and United Steelworkers of America; company grievances*, December 4, 1974. Majority: Shime, Pyle — 29 pages; did not concur: Munro. (70)*

Travel Allowance

Emergency overtime: travel time provision not applicable when scheduled shift worked without necessity of extra trip; grievance dismissed. *Re Ontario Hydro and Canadian Union of Operating Engineers; group grievance*, December 12, 1974. Majority: Brandt, B. H. Stewart — 13 pages; did not concur: Wood. (71)

No requirement to pay for travelling time beyond actual time spent in travel. *Re Hydro-Electric Power Commission of Ontario and Canadian Union of Public Employees, Local 1000; policy grievance*, December 3, 1974. Majority: Shime, Hamilton — four pages; dissent: Wren — five pages; addendum: Hamilton — two pages. (72)

Union Discipline

Expulsion of union member working as supervisor during strike — employer violating collective agreement by employing expelled member. *Re Dover Corporation (Canada) Limited and International Union of Elevator Constructors, Local 90; union grievance*, November 28, 1974. O'Shea — 33 pages. (73)*

Union Officials

Illegal walk-out: more onerous penalty to union officers justified. *Re Robson-Lang Leathers Limited and Canadian Food and Allied Workers* — see (28), *supra*. (74)

Union Security

Failure to deduct union dues — company in violation of agreement; grievance upheld. *Re Sheaffer Pen Company and International Association of Machinists* — see (3), (40), *supra*. (75)

Work Assignment

Temporary assignment not according to seniority — grievor estopped by previous refusals to accept job; grievance dismissed. *Re S.K.D. Manufacturing Company Limited and United Automobile Workers, Local 89; D'Alimonte* grievance 74-8, November 18, 1974. Stewart — 12 pages. (76)

The awards may be seen at the offices of the Commission, 400 University Avenue 14th floor, Toronto. Copies of awards may be obtained for a fee of 50 cents per page. Orders will be filled on receipt of an application and a cheque or money order payable to the Treasurer of Ontario for the applicable amount, which should be forwarded to: Cashier's Office, Ministry of Labour, 400 University Avenue, Toronto, Ontario M7A 1V6.

Filing Awards

The attention of chairmen of boards of arbitration and sole arbitrators is drawn to the provision of Section 6(2) of the Regulation, which reads:

6.—(2) Every arbitrator shall, within ten days of issuing an award, file a copy thereof with the Commission. This provision would apply to all arbitrators approved under The Ontario Labour-Management Arbitration Commission Act and regardless of whether they were appointed as chairmen or sole arbitrators pursuant to the Act, by the parties or by the Minister.

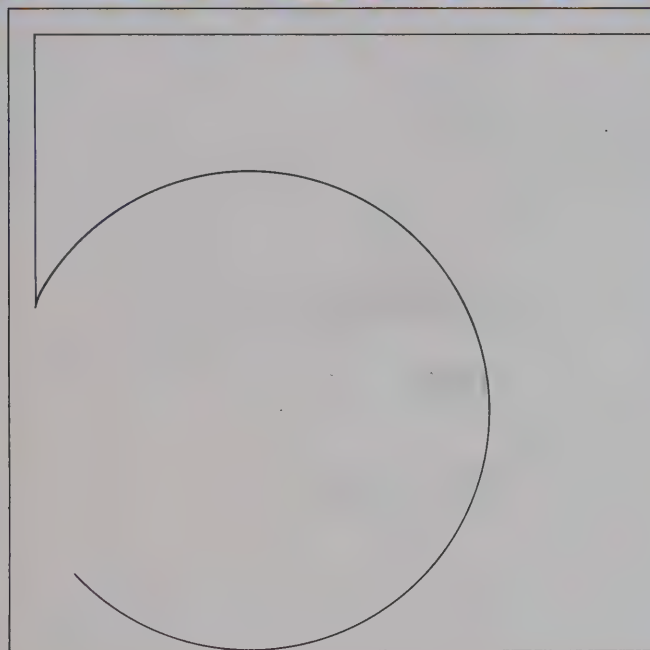
Mailing List

The Commission is preparing a comprehensive mailing list of persons interested in receiving the monthly Bulletin. Anyone who wishes to be added to the list should write to the Commission stating the number of copies required.

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Monthly Bulletin



The Ontario Labour-Management
Arbitration Commission

His Honour Judge Walter Little, Chairman
D. W. Rose, QC, Counsel and Registrar

The Ontario Labour-Management
Arbitration Commission
Ontario Ministry of Labour
400 University Avenue, 14th Floor
Toronto, Ontario
M7A 1T7

Hon. John P. MacBeth, QC, Minister
Robert D. Johnston, Deputy Minister

June, 1975
Volume 5, Number 3

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involved in labour-management
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Awards

The following awards were filed with the Commission during the month of March, under Section 6(2) of Ontario Regulation 635, R.R.O. 1970.

The summary was prepared at the Faculty of Law, Queen's University, under the supervision of C. G. Simmons, B.A., B.C.L., LL.M., and D. D. Carter, B.A., LL.B., B.C.L.

*Indicates award to be reported in full or in part, in *Labour Arbitration Cases*.

Bargaining Unit

Exclusion of technical personnel — darkroom technician not excluded; grievance allowed. *Re Woodstock General Hospital Trust and London and District Building Service Workers' Union, Local 220; union grievance*, March 17, 1975. Weatherill, Walsh, Purdy — nine pages. (1)

Call-back Pay

Entitlement — agreement qualifying terms of collective agreement; entitlement not established, grievance dismissed. *Re Allied Chemical Canada Limited and United Automobile Workers, Local 89; Cunningham, Court grievances*, March 7, 1975. Brandt — six pages. (2)

"Mock disaster" exercise — grievor entitled despite voluntary nature of exercise; grievance allowed. *Re Ajax and Pickering General Hospital and Nurses' Association; Herdman et al grievances*, January 2, 1975. Majority: Weatherill, Walsh — six pages; did not concur: Smith. (3)*

Classification

Creation of new job — no evidence of breach of collective agreement; grievance premature. *Re Westinghouse Canada Limited and United Electrical, Radio and Machine Workers, Local 546; Clements, Kamphuis grievance*, December 16, 1974. Palmer, Binning, Greenwood — four pages; addendum: Greenwood — one page. (4)

Down-grading of work alleged — not established; grievance dismissed. *Re Canadian General Electric Company Limited and United Electrical, Radio and Machine Workers, Local 524; policy grievance*, January 8, 1975. Majority: Weatherill, Tarasuk — 11 pages; dissent: Wren. (5)

Duties falling within the scope of grievor's regular job — grievance claiming higher rate dismissed. *Re Alcan Canada Products Limited and United Steelworkers; Barnes grievance*, January 10, 1975. Majority: Weatherill, Clark — seven pages; dissent: Mitchell — two pages. (6)

Duties not squarely within higher classification — company classification proper; grievance dismissed. *Re Marsland Engineering Limited and United Automobile Workers; policy grievance*, February 28, 1975. Majority: Brown, Boehmer — 11 pages; dissent: Sutter — one page. (7)

Lead hand job — grievor not required to perform leadership functions; grievance dismissed. *Re Toronto Iron Works Limited and United Steelworkers, Local 2820; Kennedy grievance*, February 17, 1975. O'Shea, Munro, Smith — ten pages; addendum: Munro — two pages. (8)

No job description appropriate to tasks assigned — improper classification; parties directed to agree on classification of new job. *Re Ex-Cell-O Corporation of Canada Limited and International Molders and Allied Workers, Local 49; policy grievance*, March 6, 1975. Weatherill, Wohl, Lewis — seven pages. (9)*

Work assignment alleged to alter job classification — duties of other classification not performed; grievance dismissed. *Re Ferranti-Packard Limited and United Electrical, Radio and Machine Workers, Local 525; Richard grievance*, January 31, 1975. Majority: Weatherill, Winkler — seven pages; dissent: Thornley — eight pages. (10)

Damages

Calculation of damages from previous award. *Re Terra Krete Limited and Laborers' International Union, Local 607; Trapp grievance*, February 13, 1975. Aggarwal, Brayshaw, Elvert — three pages. (11) See also Vol. 4, 11(48)

Demotion

Non-disciplinary demotion — employer acting in good faith; grievance dismissed. *Re International Nickel Company of Canada Limited and United Steelworkers; Bertrand grievance*, February 11, 1975. Majority: Hinnegan, Heintzman — 15 pages; dissent: Gareau. (12)*

Work performance inadequate — non-disciplinary demotion justified. *Re Northern Electric Company Limited and United Automobile Workers, Local 27; McMillen grievance*, March 21, 1975. Brandt — six pages. (13)*

Discharge

Absenteeism — evidence establishing *bona fide* illness; reinstatement with partial compensation awarded. *Re Acadian Platers Company Limited and United Steelworkers; anonymous grievor*, March 4, 1975. Majority: Shime, Hart — seven pages; partial dissent: Bertuzzi — three pages. (14)

Abuse of leave of absence alleged — not established; discharge not justified. *Re Trustees of Ottawa Civic Hospital and Canadian Union of Public Employees, Local 576; Bucciarelli grievance*, March 6, 1975. Majority: Weatherill, Walsh — ten pages; dissent: Winkler — one page. (15)*

Application of policy concerning professional requirements resulting in discharge of grievor — lack of notice and improper discrimination; reinstatement with compensation. *Re Oshawa General Hospital and Nurses' Association; Heasman grievance*, January 2, 1975. Weatherill Walsh, Whittaker — ten pages; addendum: Walsh — one page. (16)*

Assault on supervisor — just cause for discharge. *Re Graham Food Products Limited and Teamsters, Local 141; Long grievance*, March 5, 1975. Majority: Hinnegan, Pyle — seven pages; dissent: Kobryn — five pages. (17)

Assault on supervisor alleged — not established; reinstatement with compensation. *Re Ford Motor Company of Canada Limited and United Automobile Workers, Local 707; Dakovic grievance*, February 24, 1975. Palmer — eight pages. (18)

Culminating incident: abusive and foul language — past record not justifying discharge; two-week suspension substituted. *Re Westbury Hotel and Hotel and Club Employees, Local 299; Szeles grievance*, February 6, 1975. Majority: McCulloch, Tate — 16 pages; did not concur: Gray. (19)

Culminating incident: threat of fight — grievance dismissed. *Re Firestone Steel Products of Canada and United Automobile Workers, Local 27; Ivanchenko grievance*, February 12, 1975. Rayner — six pages. (20)

Failure to notify of unavailability for work — discharge unjustified; reinstatement with one-week suspension. *Re Fruehauf Trailer Company of Canada Limited and United Automobile Workers; Crevier grievance*, February 21, 1975. Palmer — six pages. (21)*

Failure to report damaged equipment — discharge not justified; reinstatement with compensation. *Re Jordan Wines Limited and Brewery Workers, Local 304; Crawford grievance*, January 6, 1975. Weatherill — seven pages. (22)

Failure to report for work — certificate of doctor not sufficient to justify absence when material facts concealed; grievance dismissed. *Re Ford Motor Company of Canada Limited and United Automobile Workers, Local 1520; Ewart grievance*, February 25, 1975. Palmer — seven pages. (23)*

Failure to return to work; grievor failing to inform employer of new address after strike settlement — grievance allowed; reinstatement with suspension. *Re National Auto Radiator Manufacturing Company Limited and United Automobile Workers, Local 195; Chartier grievance*, March 12, 1975. Kruger — 11 pages. (24)

Falsification of payroll cheque — just cause for discharge. *Re Massey-Ferguson Industries Limited and United Automobile Workers, Local 439; Nazar grievance*, March 12, 1975. Brandt — ten pages. (25)

Fighting with another employee — momentary aberration in tense situation; one-month suspension substituted. *Re Eaton Yale Limited, Forestry Equipment Division and International Molders and Allied Workers; Hammond grievance*, March 18, 1975. Shime — six pages. (26)

Illegal strike — active participation; discharge justified. *Re Douglas Aircraft Company of Canada Limited and United Automobile Workers, Local 1967; McConnell grievance*, March 18, 1975. O'Shea — nine pages. (27)

Illegal strike; active support by bargaining committee member — discharge justified. *Re Douglas Aircraft Company of Canada Limited and United Automobile Workers, Local 1967; Benjamin grievance*, March 18, 1975. O'Shea — eight pages. (28)

Illegal strike; concerted action — grievor acting in concert with bargaining committee as a whole; discharge justified. *Re Douglas Aircraft Company of Canada Limited and United Automobile Workers, Local 1967; Hopkinson grievance*, March 18, 1975. O'Shea — nine pages. (29)

Illegal strike — culpability of union official greater than rank and file members; discharge justified. *Re Douglas Aircraft Company of Canada Limited and United Automobile Workers, Local 1967; Wilson grievance*, March 18, 1975. O'Shea — 40 pages. (30)*

Incompetence alleged — not shown; tacit condonation of grievor's actions; suspension substituted. *Re Montfort Hospital and Ontario Nurses' Association; St. Jean grievance*. Awards: interim, February 14, 1975: O'Shea, Walsh, Billings — two pages; final, February 17, 1975: O'Shea, Walsh, Billings (concurring in result) — 21 pages. (31)

Insubordination alleged — company failing to satisfy burden of proof; grievance allowed — reinstatement with compensation. *Re International Nickel Company of Canada Limited and United Steelworkers, Local 6500; anonymous grievor*, February 28, 1975. Majority: Shime, Guillet — ten pages; did not concur: Sanderson. (32)

Insubordination and assault on foreman; culminating incident — grievance dismissed. *Re Fleet Express Lines Limited and General Truck Drivers, Local 938; anonymous grievor*, March 18, 1975. Majority: Shime, Kennedy — 15 pages; dissent: Walsh — one page. (33)

Insubordination and threatening behaviour alleged — evidence of discrimination against grievor; impairment led grievor to behave out of usual character; suspension substituted. *Re Formosa Spring Brewery and United Brewery Workers, Local 306; Fairbairn grievance*, March 12, 1975. Curtis — 12 pages. (34)

Quit: letter withdrawing resignation refused — no attempt to discipline by an indirect method; no violation of collective agreement; grievance dismissed. *Re Northern Electric Company Limited and United Automobile Workers, Local 1837; Yeomans grievance*, March 7, 1975. Brown — 16 pages. (35)

Quit alleged — grievor's actions not amounting to quit; reinstatement without compensation. *Re Kemptville District Hospital and International Union of Operating Engineers, Local 796; Buchanan grievance*, March 4, 1975. O'Connor — ten pages. (36)*

Reckless throwing of a knife handle — reinstatement without compensation. *Re Pellon Chemotextiles Limited and Textile Workers Union; Labelle grievance*, March 15, 1975. Abbott — 18 pages. (37)

Theft: taking of employer's property in violation of rules — failure to establish intention to pay; discharge justified. *Re Dominion Stores Limited and Retail, Wholesale and Department Store Union, Local 414; Iammatteo grievance*, March 21, 1975. Majority: Curtis, White — ten pages; dissent: Reekie — one page. (38)

Theft of company property — just cause for discharge. *Re International Nickel Company of Canada Limited and United Steelworkers, Local 6500; anonymous grievor*, March 17, 1975. Majority: Shime, Winkler — 19 pages; dissent: Keuhl. (39)

Theft of employer's cash — discharge justified. *Re Brewers Warehousing Company Limited and United Brewers' Warehousing Workers' Provincial Board; Medland grievance*, March 4, 1975. Hinnegan — eight pages. (40)

Unsatisfactory driving record outside employment — discharge not justified; reinstatement with compensation. *Re Jordan Wines Limited and Brewery Workers, Local 304; English grievance*. January 6, 1975. Weatherill — six pages. (41)

Unsatisfactory work performance — no previous formal warning; one-week suspension substituted. *Re Merchants Paper Company (Windsor) Limited and Teamsters, Local 880; Langlois, Poulin grievances*, February 4, 1975. Majority: Palmer, Kobryn — eight pages; dissent: Merrifield — two pages. (42)

Discipline

Absence without leave: requested leave of absence denied — lack of concern to attend work as scheduled; one-day suspension justified. *Re Ferranti-Packard Limited and United Steelworkers, Local 5783; Gordon grievance*, February 28, 1975. O'Shea, Marshall, Hersey — ten pages. (43)

Assignment back to regular work — not disciplinary; grievance dismissed. *Re Steel Company of Canada Limited and United Steelworkers, Local 1005; Kolesar grievance*, March 21, 1975. Majority: Weatherill, Morley — nine pages; dissent: Sharp — two pages. (44)

Insubordination — (1) grievor (Rogers) already suspended; hence not subject to employer's orders; (2) grievor (Quinn) merely telling suspended employees they were free to go home; grievances allowed. *Re Ford Motor Company of Canada Limited and United Automobile Workers, Local 707; Rogers, Quinn grievances*, January 28, 1975. Palmer — eight pages. (45)

Insubordination: presence in prohibited area at punch-out time — demerit slip with compensation substituted for three-day suspension in all but one case. *Re National Auto Radiator Manufacturing Company Limited and United Automobile Workers; Pavlik et al grievance*, March 7, 1975. Ord — five pages. (46)

Insubordination: refusal to comply with order — three-day suspension upheld. *Re Ford Motor Company of Canada Limited and United Automobile Workers* — see (18), *supra*. (47)

Insubordination: refusal to follow instructions — orders not shown to be unsafe; suspension justified. *Re Steel Company of Canada Limited, Hilton Works and United Steelworkers, Local 1005; Hayes grievance*, December 16, 1974. Majority: Palmer, Storie — six pages; dissent: Stetson. (48)

Insubordination: refusal to perform work assigned by supervisor — three-day, one and three-quarter-hour suspension reduced to two-day suspension; grievance dismissed. *Re Ferranti-Packard Limited and United Electrical Workers, Local 525; Welsh grievance*, December 20, 1974. Roberts — 12 pages; partial dissent: Morley — two pages; dissent: Thornley — six pages. (49)

Neglect of duties alleged — company failing to discharge onus of proving neglect; suspension unjustified. *Re Coca-Cola Limited and United Brewery Workers; Newall grievance*, February 7, 1975. Rayner — six pages. (50)

Safety rule breached: failure to lock out machinery during maintenance — six-day suspension justified for two grievors; warning with compensation substituted for the other. *Re Slater Steel Industries Limited and United Steelworkers, Local 4752; Hornby et al grievances*, March 17, 1975. Shime — 25 pages. (51)*

Theft of company property alleged — evidence not conclusive; suspension not justified. *Re Abex Industries Limited and International Chemical Workers, Local 175; Terryberry grievance*, February 27, 1975. Majority: Brown, Simon — 11 pages; dissent: Dryden — three pages. (52)

Theft of company's property alleged — no evidence; grievance allowed. *Re Air Canada and International Association of Machinists; Farrugia grievance*, February 11, 1975. Brown — four pages. (53)

Unsatisfactory work performance alleged — mitigating circumstances; all allegations not proved; written reprimand removed from record. *Re Loblaw Groceries Company Limited and Union of Canadian Retail Employees; Ball grievance*, March 17, 1975. Schiff — five pages. (54)

Estoppel

Arrangement outside collective agreement made at request of union — union estopped from claiming violation of agreement; grievance dismissed. *Re American Can of Canada Limited and Can Workers' Federal Union, Local 535; Shoff grievance*, January 22, 1975. Majority: Weatherill, Morley — six pages; dissent: Biggs. (55)

Failure to respond to union letter — doctrine of estoppel not applicable. *Re Air Canada and Canadian Air Line Employees Association; Solylo grievance*, February 25, 1975. Majority: Brown, Winkler — nine pages; dissent: Myers — 11 pages. (56)

Grievance Procedure

(1) particulars of grievance — company allegation of insufficient particulars invalid; grievance arbitrable; (2) policy grievance — grievance relating to overtime properly filed as policy grievance; grievance arbitrable. *Re H. Poitras Enterprises Limited and Canadian Union of Public Employees, Local 1667; policy grievance*, February 14, 1975. Majority: O'Connor, Valin — 12 pages; dissent (to follow): Guillet. (57)

Policy grievance — provision barring a policy grievance where an individual grievance would lie, not applicable where a specific provision provides for a policy grievance. *Re Marsland Engineering Limited and United Automobile Workers* — see (7), *supra*. (58)

Policy grievance not expressly provided for by collective agreement — grievance arbitrable by virtue of section 7(5) of *The Fire Departments Act*, but single arbitrator not required. *Re Corporation of City of Windsor and International Association of Firefighters, Local 455; policy grievance*, January 21, 1975. Majority: Weatherill, McConville — 16 pages; dissent: Burnell — seven pages. (59)*

Scope of grievance — grievance protesting suspension in contemplation of discharge raising issue of discharge. *Re Industrial Fasteners Limited and United Steelworkers, Local 7940; Lauzon grievance*, March 18, 1975. Weatherill — four pages. (60)

Timeliness — time limits of grievance procedure not followed; grievance dismissed. *Re National Steel Car Corporation Limited and United Steelworkers; Majik grievance*, February 14, 1975. Weatherill, O'Neal, McKillop — eight pages. (61)

Waiver of time limits — company deemed to have waived time limit by processing grievance through initial stages; grievance arbitrable. *Re Budd Automotive Company of Canada Limited and United Automobile Workers, Local 1451; policy grievance*, February 3, 1975. Weatherill — 11 pages. (62)

Holiday Pay

Calculation of qualifying period — work must be completed during current period of employment; grievance dismissed. *Re Electrohome Limited and International Brotherhood of Electrical Workers, Local 2345; Babinek, Schnarr grievances*, March 21, 1975. Majority: Weatherill, Gray — ten pages; dissent: Dollack — one page. (63)

Qualifying days — failure to report for shift next following holiday; grievance dismissed. *Re Ferranti-Packard Limited and United Steelworkers, Local 5788; Gordon grievance*, March 10, 1975. Weatherill, Marshall, Macey — seven pages. (64)

Holidays

Pay for time worked on holiday — entitled to premium rate for hours worked and regular pay for standard work-day; grievance dismissed. *Re St. Thomas-Elgin General Hospital and London and District Building Service Workers, Local 220; Balsdon grievance*, February 14, 1975. Majority: Weatherill, Farrar — ten pages; dissent: Walsh. (65)*

Hours of Work

Regular schedule — posted schedule not constituting regular schedule; grievance allowed. *Re Allied Chemical Canada Limited and United Automobile Workers, Local 89; Kelly, Custance grievances*, March 7, 1975. Brandt — seven pages. (66)

Scheduled days-off — work schedule not providing definite delineation of individual days-off; grievance dismissed. *Re Steel Company of Canada Limited and United Steelworkers, Local 1005; Tamborine et al grievances*, February 18, 1975. Majority: Beatty, Morley — 14 pages; dissent: Walsh. (67)

Interpretation

Use of extrinsic evidence — no ambiguity established; evidence inadmissible. *Re Air Canada and Canadian Air Line Employees Association* — see (56), *supra*. (68)

Job Posting

Contents of vacancy notice — grievance dismissed. *Re International Nickel Company of Canada Limited and United Steelworkers, Local 6500; Eveline grievance*, March 14, 1975. Majority: Gorsky, Filion — eight pages; dissent: Guillet. (69)

Job Vacancy

Existence of vacancy — employer fails to exercise its discretion on basis of availability to work; grievance allowed. *Re Air Canada and Canadian Air Line Employees Association; Bishop et al grievance*, March 20, 1975. Brandt — 17 pages. (70)*

Existence of vacancy — job within the same wage bracket and seniority group constituting vacancy. *Re Coca-Cola Limited and United Brewery Workers; MacGillivray grievance*, December 3, 1975. Weatherill — ten pages. (71)

Overtime

Distribution — assignment to person not normally performing work; grievance allowed. *Re Bundy of Canada Limited and United Automobile Workers, Local 1285; Gaspari grievance*, March 3, 1975. Weatherill — nine pages. (72)

Distribution: *ad hoc* arrangement of machine-testing — assignment to person not on regular line justified; grievance dismissed. *Re Philips Electronics Limited and United Automobile Workers, Local 27; Cole grievance*, February 12, 1975. Rayner — five pages. (73)

Denial where excessive, continuous hours of work affecting ability to do job safely — grievor properly denied overtime opportunity. *Re Domtar Chemicals Limited and Oil, Chemical and Atomic Workers; Longworth grievance*, February 12, 1975. Majority: Brandt, Byers — eight pages; dissent: Rogers — two pages. (74)*

Distribution — job duties of employees performing work bearing affinity to overtime work available; no violation of collective agreement. *Re Allied Chemical Canada Limited and United Automobile Workers, Local 89; Wallach, Lehkey grievances*, March 7, 1975. Brandt — six pages. (75)

Manager performing overtime work — evidence insufficient to bring work done within bargaining unit; no violation of agreement, grievance dismissed. *Re H. Poitras Enterprises Limited and Canadian Union of Public Employees* — see (57), *supra*. (76)

Overtime Pay

Voluntary relief work — grievance dismissed. *Re International Nickel Company of Canada Limited and United Steelworkers; Lariviere grievance*, December 20, 1974. Majority: Palmer, D.J.M. Brown — five pages; dissent: Guillet. (77)*

Probationary Employee

Calculation of probationary period — days during which grievor suspended part of probationary period; grievance arbitrable. *Re Polysar Limited and Oil, Chemical and Atomic Workers, Local 9-14; Whitton grievance*, January 30, 1975. Interim award: Weatherill, Walsh — 14 pages; dissent: Dinsdale; addendum: Walsh — one page. (78)*

Calculation of probationary period — inclusion of time worked prior to effective date of collective agreement; grievance allowed. *Re Hanmer Bus Lines Limited and Canadian Union of Public Employees, Local 895; Connors grievance 2*, March 6, 1975. Lunney — three pages; addendum: McVey — four pages; dissent: Hennessy — three pages. (79)

Procedure

Particulars — order for particulars appropriate in circumstances. *Re North Bay Civic Hospital and Canadian Union of Public Employees, Local 139; policy grievance*, March 6, 1975. Lunney — four pages. (80)

Promotion

Trial period — inadequate instruction and confusion resulting from start-up problems following legal strike making nine-day trial insufficient; grievance allowed. *Re Canada Ferro Company Limited and United Automobile Workers, Local 1285; Redmond grievance*, March 25, 1975. O'Shea — 14 pages. (81)

Scheduling of Work

Alteration of work schedule — schedule requiring regular payment of overtime; company allowed to institute alternative work pattern, grievance dismissed. *Re Steel Company of Canada Limited and United Steelworkers, Local 1005; policy grievance*, January 24, 1975. Majority: Weatherill, Storie — 13 pages; dissent: Walsh — three pages. (82)

Shift change: steady shift to rotating shift — change for purpose of efficiency; no violation of collective agreement; grievance dismissed. *Re International Nickel Company of Canada Limited and United Steelworkers; Amyot grievance*, February 28, 1975. Majority: Brown, Winkler — nine pages; dissent: McDonald — two pages. (83)

Unilateral change in starting and stopping times by company — no violation of collective agreement. *Re Hydro Electric Power Commission of Ontario and Canadian Union of Public Employees; policy grievance*, February 15, 1975. Majority: Schiff, Hamilton — eight pages; did not concur: Wren. (84)*

Seniority

Qualifications for promotion — company conclusion that grievor less qualified found reasonable; grievance dismissed. *Re Atomic Energy of Canada Limited and Office and Professional Employees, Local 404; Cotman grievance*, December 2, 1974. Majority: Palmer, Churchill-Smith — six pages; dissent: Leboeuf — two pages. (85)*

Qualification for promotion — grievor not qualified; grievance dismissed. *Re Corporation of City of Timmins and Canadian Union of Public Employees, Local 434; Comisso grievance*, February 25, 1975. Majority: Godin, Noble — eight pages; dissent: Lebel. (86)

Qualifications for promotion — grievor not qualified; grievance dismissed. *Re Eaton Yale Limited and International Molders; Gill grievance*, March 18, 1975. Shime — four pages. (87)

Qualifications for promotion — grievor's qualifications not equal; grievance dismissed. *Re Atomic Energy of Canada Limited and Ottawa Atomic Workers Union, Local 1541, CLC; Berrouard grievance*, March 21, 1975. Majority: O'Connor, Healy — 15 pages; dissent: Vetsch — two pages. (88)

Qualifications for promotion — no evidence of discrimination; grievance dismissed. *Re Consolidated Bathurst Packaging Limited and International Woodworkers, Local 2-242; Fraser grievance*, February 17, 1975. Majority: Brown, Hemsworth — 14 pages; dissent: Mather — two pages. (89)

Qualifications for promotion — sufficient ability not established; grievance dismissed. *Re Ferranti-Packard Limited and United Electrical, Radio and Machine Workers, Local 525; Doria grievance*, January 25, 1975. Majority: Roberts, Winkler — 11 pages; dissent: Thornley — four pages. (90)

Qualifications for transfer — employer's assessment made in good faith; grievance dismissed. *Re Coca-Cola Limited and United Brewery Workers* — see (71), *supra*. (91)*

Qualifications where lay-off occurs — grievor less qualified than junior employee; grievance dismissed. *Re Canada Metal Company Limited and International Chemical Workers, Local 453; Garan grievance*, February 24, 1975. Majority: O'Shea, Sparling — 13 pages; dissent: McIlwain. (92)

Qualifications where lay-off occurs — grievor not relatively equal in skill and ability; grievance dismissed. *Re Aluminum Goods Limited and United Steelworkers, Local 2858; O'Connell grievance*, February 27, 1975. Weatherill, Filion — eight pages; dissent: Grasso — two pages. (93)

Sick Pay

Hospitalization affecting entitlement — grievor hospitalized for one day; grievance allowed. *Re Franklin Manufacturing Company (Canada) Limited and International Association of Machinists, Local 1246; Lingard grievance*, February 19, 1975. Majority: Weatherill, Jardine — nine pages; dissent: Robinson — three pages. (94)*

Technological Change

New equipment; revision of manning schedule provided by agreement — onus on union to demonstrate change necessary; grievance allowed in part. *Re Globe and Mail Limited and Toronto Newspaper Printing Pressmen's Union, Number 1; policy grievance*, February 12, 1975. Majority: Brown, Armstrong — 48 pages; dissent: Dinsdale — seven pages. (95)

Transfer

Temporary transfer — grievor not having necessary skills; no violation of collective agreement. *Re Steel Company of Canada Limited and United Steelworkers, Local 1005; Graham grievance*, March 21, 1975. Majority: Weatherill, Storie — eight pages; dissent: Warrian — two pages. (96)

Union Officials

Illegal strike — union official having greater responsibility. *Re Douglas Aircraft Company of Canada Limited and United Automobile Workers* — see (30), *supra*. (97)*

Vacations

Commencement of vacation period — no requirement that vacation commence after scheduled days-off; grievance dismissed. *Re Air Canada and Canadian Air Line Employees* — see (56), (68), *supra*. (98)

Scheduling: denial of grievor's requests — employer's right to schedule vacations in accordance with availability of replacements; grievance dismissed. *Re Canadian Broadcasting Corporation and National Association of Broadcast Employees and Technicians; Coyne, Marmara grievances*, February 10, 1975. Majority: Stewart, Healy — 15 pages; dissent: Steel. (99)

Wages

Calculation of average hourly earnings — company's long standing interpretation reasonable; grievance dismissed. *Re Steel Company of Canada Limited and United Steelworkers, Local 3749; policy grievance*, January 27, 1975. Majority: Palmer, Storie — seven pages; addendum: Palmer — two pages; dissent: Munro — eight pages. (100)*

Incentive rates where off-standard conditions exist — allowance made by insertion of additional employee; no violation of collective agreement. *Re Budd Automotive Company of Canada Limited and United Automobile Workers, Local 1451; union grievance*, March 10, 1975. Brown — eight pages. (101)

Weekly guarantee — alternative union representatives entitled; grievance allowed. *Re Ford Motor Company of Canada Limited and United Automobile Workers, Locals 200, 584, 707, 1054, 1520; group grievance*, February 25, 1975. Palmer — five pages. (102)

Work Assignment

Assignment outside job classifications alleged — no evidence that the named grievor had been so assigned; grievance dismissed. *Re Steel Company of Canada Limited and United Steelworkers, Local 1005; group grievance*, February 13, 1975. O'Shea, Morley, Lisson — nine pages. (103)

Casual employees assigned work — assignment proper; grievance dismissed. *Re Canadian National Railways and Transportation-Communication Division, BRAC, Divisions 1, 85; policy grievance*, February, 1975. Arthurs — seven pages. (104)*

Creation of temporary classification alleged — company's action amounting to temporary work assignment to existing classification; grievance dismissed. *Re Canadian National Railway Company Telecommunications Department and Canadian Telecommunications Union, Division 43, United Telegraph Workers; policy grievance*, February 27, 1975. Majority: Brown, Dinsdale — 14 pages; dissent: Pethick — nine pages. (105)*

Non-bargaining unit employees assigned work — evidence shows no invasion of exclusive bargaining unit duties; grievance dismissed. *Re Budd Automotive Company of Canada Limited and United Automobile Workers* — see (62), *supra*. (106)

Non-bargaining unit employees assigned work — grievance allowed; no damages proven. *Re GTE Automatic Electric (Canada) Limited and International Union of Electrical, Radio and Machine Workers, Local 526; policy grievance*, February 12, 1975. Brown, Henderson, Weisbach — 12 pages. (107)

Non-bargaining unit employee spontaneously providing assistance in emergency — not an assignment by employer; grievance dismissed. *Re Air Canada and Canadian Air Line Employees Association; union grievance*, March 7, 1975. Weatherhill — nine pages. (108)

Overlap of classifications — assignment of work falling primarily within job classification justified; grievance dismissed. *Re American Can of Canada Limited and Can Workers' Federal Union, Local 354; group grievance*, February 13, 1975. Majority: O'Shea, Morley — 16 pages; dissent: Walsh. (109)

Specialized classifications specified in collective agreement — restricting employer's right to assign work; grievance allowed. *Re Kelsey-Hayes Canada Limited and United Automobile Workers, Local 195; policy grievance*, March 3, 1975. Hinnegan — 11 pages. (110)*

The awards may be seen at the offices of the Commission, 400 University Avenue 14th floor, Toronto. Copies of awards may be obtained for a fee of 50 cents per page. Orders will be filled on receipt of an application and a cheque or money order payable to the Treasurer of Ontario for the applicable amount, which should be forwarded to: Cashier's Office, Ministry of Labour, 400 University Avenue, Toronto, Ontario M7A 1V6.

Filing Awards

The attention of chairmen of boards of arbitration and sole arbitrators is drawn to the provision of Section 6(2) of the Regulation, which reads:

6.—(2) Every arbitrator shall, within ten days of issuing an award, file a copy thereof with the Commission. This provision would apply to all arbitrators approved under The Ontario Labour-Management Arbitration Commission Act and regardless of whether they were appointed as chairmen or sole arbitrators pursuant to the Act, by the parties or by the Minister.

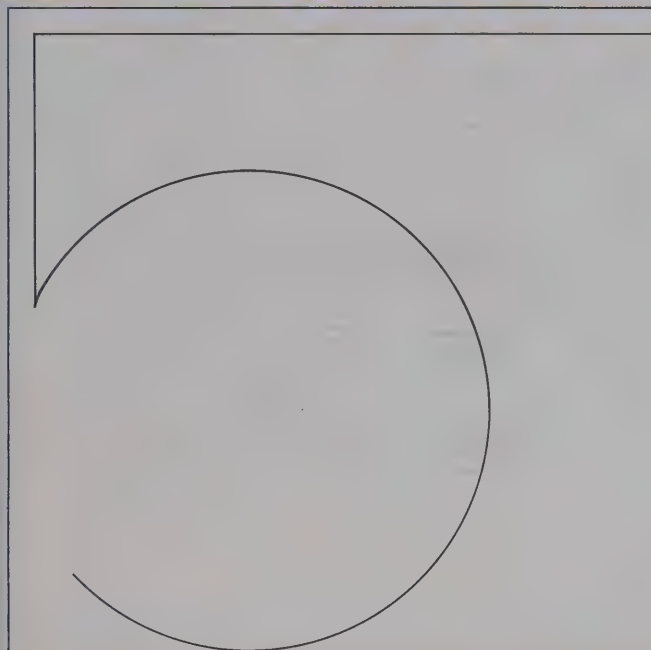
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Monthly Bulletin



The Ontario Labour-Management
Arbitration Commission

His Honour Judge Walter Little, Chairman
D. W. Rose, QC, Counsel and Registrar

The Ontario Labour-Management
Arbitration Commission
Ontario Ministry of Labour
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Hon. John P. MacBeth, QC, Minister
Robert D. Johnston, Deputy Minister

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Arbitrators

The following person has been approved as chairman of boards of arbitration or single arbitrator pursuant to The Ontario Labour-Management Arbitration Commission Act and Ontario Regulation 635:

Bigelow, S. Tupper, Esq., Q.C., 58 Gardenvale Road,
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Changes of Address and Telephone Number

The following changes should be noted, effective immediately:

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922-2170.

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Awards

The following awards were filed with the Commission during the month of May, under Section 6(2) of Ontario Regulation 635, R.R.O. 1970.

The summary was prepared at the Faculty of Law, Queen's University, under the supervision of C.G. Simmons, B.A., B.C.L., LL.D., and D.D. Carter, B.A., LL.B., B.C.L.

*Indicates award to be reported in full or in part in
Labour Arbitration Cases.

Arbitrability

Specific relief no longer sought by grievor — issue not moot; declaratory decision available. *Re International Nickel Company of Canada Limited and United Steelworkers of America, Local 6500; Grenier grievance*, April 15, 1975. Majority: Simmons, Clark — 17 pages; addendum: Clark — one page; dissent: Guillet. (1)*

Classification

Duties of lower classification being performed — transfer proper; grievance dismissed. *Re Slater Steel Industries Limited, Slater Products Division and United Steelworkers of America, Local 3505; Passmore, Von der Borch grievance*, May 12, 1975. Weatherill — nine pages. (2)

Elimination of shift work — classification not eliminated by cancellation of shift work; grievor not entitled to exercise bumping rights. *Re Grace Chemicals Limited, Cryovac Division and Canadian Union of Operating Engineers, Local 101; Hawkes grievance*, May 13, 1974. Majority: Weatherill, Byers — seven pages; did not concur: Reynolds. (3)*

New job classification created — properly classified and posted; grievance dismissed. *Re Westeel-Rosco Limited and United Steelworkers of America; policy grievance*, May 30, 1974. Majority: Weatherill, Storie — seven pages; addendum: Storie — two pages; did not concur: Nicol. (4)

Contracting-out

Work normally performed by members of bargaining unit sub-contracted — grievance allowed. *Re G.S.W. Appliances Limited and United Steelworkers of America, Local 3129; policy grievance*, April 30, 1975. Shime — four pages. (5)

Damages

Loss of incentive pay claimed — company not required to pay excess of incentive bonus earnings; grievance dismissed. *Re International Nickel Company of Canada Limited and United Steelworkers of America; Seguin grievance*, March 21, 1975. Majority: H.D. Brown, D.J.M. Brown — nine pages; dissent: Guillet. (6)*

Demotion

Refusal of transfer resulting in demotion — demotion proper. *Re Dominion Stores Limited and Retail, Wholesale and Department Store Union, Local 414; Armstrong grievance*, April 24, 1975. Majority: O'Shea, White — 13 pages; dissent: Reekie — two pages. (7)

Discharge

Absence without notice — explanation not sufficient; discharge justified. *Re Kimberly-Clark of Canada Limited and International Chemical Workers, Local 813; Ruf grievance*, April 30, 1974. Weatherill, Clawson, McIlwain — 12 pages. (8)

Absenteeism; failure to submit medical report — discharge justified; grievance dismissed. *Re Canada-Ferro Company and United Automobile Workers, Local 1285; Mark grievance*, March 13, 1974. Weatherill — 12 pages. (9)

Absenteeism and lateness — prior warning and suspension; discharge justified. *Re Fleet Manufacturing Company and International Association of Machinists and Aerospace Workers, Lodge 171; Philps grievance*, May 20, 1975. Majority: Andrews, Marchand — 11 pages; dissent: Wren. (10)

Assault on patient — discharge justified. *Re Martingale Villa Nursing Home and Canadian Union of Public Employees; De Peuter grievance*, April 30, 1975. Majority: Ferguson, Ade — ten pages; dissent: Bird — three pages. (11)

Culminating incident: negligent operation of equipment; insubordination — discharge justified. *Re Hogarth Galvanizing Limited and International Molders and Allied Workers' Union, Local 28; Clarke grievance*, April 29, 1975. Beatty, Heather, Wren — 16 pages. (12)

Insubordination: assault on foreman — discharge justified; grievance dismissed. *Re Babcock and Wilcox Canada Limited and United Steelworkers of America, Local 2859; Schwingeler grievance*, June 20, 1974. Majority: Weatherill, Sanderson — nine pages; dissent: Taylor. (13)

Insubordination; breach of employer's rules — discharge justified; grievance dismissed. *Re Brewers' Warehousing Company Limited and United Brewers' Warehousing Workers' Provincial Board; Besner grievance*, May 7, 1975. O'Connor — eight pages. (14)

Insubordination; failure to comply with instructions — mitigating medical circumstances; conditional reinstatement without compensation. *Re Custom Concrete Limited and Teamsters' Local 230; Rioual grievance*, April 29, 1975. Majority: Ferguson, Bradley — eight pages; dissent: Beaulieu — one page. (15)

Insubordination: refusal to perform work assignment — grievance dismissed; employer ordered to change record to show employment relationship severed for medical reasons. *Re Northern and Central Gas Corporation Limited and United Steelworkers of America, Local 7356; Pilote grievance*, May 5, 1975. Majority: Adams, Stringer — 37 pages; dissent: Schultz — one page; addendum: Stringer — one page; addendum: Adams — six pages. (16)

Lack of work reason for discharge — not for "just cause"; grievance allowed. *Re GWG (Eastern) Limited and Local 551, Amalgamated Clothing Workers of America; McPherson grievance*, May 5, 1975. Lang — three pages. (17)

Negligence causing accident — hangover a contributing factor; probationary reinstatement without compensation substituted. *Re Atlas Steels Company and Canadian Steelworkers' Union, Atlas Division; Lazowski grievance*, April 24, 1975. O'Shea, Fleury, Rogers — nine pages. (18)

Theft of company property — just cause for discharge; grievance dismissed. *Re Reflex Corporation of Canada Limited and United Automobile Workers, Local 89; Gibb grievance*, May 3, 1974. Weatherill — seven pages. (19)

Unsafe work practices — allegation that grievor accident-prone not proven; discharge not justified. *Re F.M.C. of Canada Limited and United Steelworkers of America, Local 3394; Rubino grievance*, April 9, 1975. Majority: O'Shea, Fitzpatrick — 18 pages; dissent: Healy — three pages. (20)

Unsatisfactory work performance alleged — reinstatement ordered with four weeks' wages. *Re Wrigley Steel Company of Canada Limited and United Automobile Workers, Local 195; Bastin grievance*, May 1, 1975. McCulloch — 12 pages. (21)

Discipline

Absence from workplace without permission — three-day suspension reduced to one-day suspension. *Re J.A. Johnston Company and Retail, Wholesale and Department Store Union, Local 414; McBratney grievance*, May 8, 1975. Anderson, M. Brown, Hall — six pages. (22)

Insubordination; abusive language directed at supervisor — two-day suspension justified; taking of supplies — three-day suspension unjustified; written warning substituted. *Re Victoria Hospital Corporation and London and District Building Service Workers' Union, Local 220; Calhoun grievance*, March 25, 1975. Majority: O'Shea, Walsh — 12 pages; dissent: Rovet — four pages. (23)

Insubordination: refusal of work assignment — refusal reasonable; not challenge to authority — suspension unjustified. *Re Liquid Carbonic Canada Limited and United Steelworkers of America, Local 12998; Robinson grievance*, May 9, 1975. Shime, Winkler, Signoretti — six pages. (24)*

Estoppel

Substitution of greater penalty by higher echelon of management — not estopped where original settlement based on misrepresentation made by grievor. *Re Martingale Villa Nursing Home and Canadian Union of Public Employees* — see (11), *supra*. (25)

Evidence

Onus of establishing qualifications — onus shifting to employer. *Re Bridge and Tank Company of Canada Limited and United Steelworkers of America, Local 2537; Preston grievance*, May 12, 1975. Majority: Weatherill, Morgan — eight pages; dissent: McKillop — three pages. (26)*

Relevancy — evidence relating to work situations of other employees not relevant. *Re Ontario-Minnesota Pulp and Paper Company Limited and International Association of Machinists, Lodge 771; union grievance*, November 1, 1974. Preliminary ruling: Weatherill — five pages. (27)

Grievance Procedure

Technical irregularity — section 103 of *The Ontario Labour Relations Act* applying; objection dismissed. *Re Porcupine Health Unit, Timmins and Nurses Association Porcupine Health Unit, Local 10 O.N.A.; May et al grievance*, April 10, 1975. Majority: Ord, Walsh — eight pages; dissent: Noble — three pages. (28)

Timeliness: union failing to file grievance within time limits — provision mandatory; grievances not arbitrable. *Re Standard Brands Canada Limited and International Union of Doll and Toy Workers, Local 905; Silveira, Raposo grievances*, May 8, 1975. Majority: Brown, Longworth — 18 pages; dissent: Simon — five pages. (29)

Holiday Pay

Qualifying days; failure to work regularly scheduled shift on Sunday prior to holiday — no entitlement; grievance dismissed. *Re E.B. Eddy Company and United Paperworkers International Union, Locals 33, 34, 50, 73; group grievance*, May 9, 1975. Shime, Lawrence, Wright — four pages. (30)

Job Evaluation

Incentive standards: direction for company to carry out study of job to set appropriate rate. *Re Ferranti-Packard Limited and United Steelworkers of America, Local 5788; Caperchione grievance*, May 23, 1974. Interim award: Weatherill, Marshall, Macey — four pages. (31)

Job Posting

Existence of vacancy — vacancy never existing; grievance dismissed. *Re International Nickel Company of Canada Limited and United Steelworkers of America; Perfetto grievance*, April 28, 1975. Majority: Simmons, Binning — six pages; dissent: Yule. (32)

Location of vacancy — no restriction on location of vacancy; grievance dismissed. *Re International Nickel Company of Canada Limited and United Steelworkers of America, Local 6500; Charrier grievance*, April 30, 1975. Majority: Brandt, Winkler — 13 pages; dissent: Carriere. (33)

Withdrawal of posting — justified where employer can establish that vacancy no longer exists; grievance dismissed. *Re International Company of Canada Limited and United Steelworkers of America* — see (1), *supra*. (34)*

Laches

Filing of grievance six months after employment ceased — unreasonable delay; grievance dismissed. *Re Foundation Company of Canada Limited and United Brotherhood of Carpenters and Joiners of America; union grievance*, June 20, 1974. Majority: Weatherill, Becigneul — eight pages; dissent: Reid — two pages. (35)

Lay-off

Emergency situation — normal lay-off procedures inapplicable to electrical failure; grievance dismissed. *Re Union Carbide Canada Limited and United Electrical, Radio and Machine Workers of America, Local 523; group grievance*, May 8, 1975. Majority: Hinnegan, Orsini — seven pages; dissent: Wright — one page. (36)

Union approval: lay-off out of seniority requiring designation and subsequent union approval — union approval not required in ordinary lay-off situation; grievance dismissed. *Re Canadian Trailmobile Limited and United Automobile Workers, Local 397; policy grievance*, May 27, 1975. Weatherill — five pages. (37)

Overtime

Calculation: overtime rate not payable for work performed on sixth and seventh days of work-week — time off work for holiday and lay-off not considered as if work performed; no overtime payable. *Re Lundy Steel Limited and United Steelworkers of America, Local 4140; group grievance*, March 27, 1975. Majority: Brown, Becigneul — seven pages; dissent: Smith. (38)

Calculation of weekly overtime where work performed on holiday — hours paid at holiday premium to be included; grievance allowed. *Re Canada Packers Limited and Canadian Food and Allied Workers, Local P417; Tomlin, Hale grievances*, June 18, 1974. Majority: Weatherill, Walsh — nine pages; dissent: Bowman — three pages. (39)*

Distribution: overtime to be distributed evenly over calendar year — grievance premature, brought before data for full year compiled; grievance dismissed. *Re Fiberglas Canada Limited and Textile Workers Union of America, Local 1305; Milne grievance*, May 26, 1975. Brandt — ten pages. (40)

Distribution of emergency repair work — shift preference not applicable; grievance dismissed. *Re Canadian Trailmobile Limited and United Automobile Workers, Local 397; Van den Berg grievance*, May 27, 1975. Weatherill — five pages. (41)

Existence of overtime; unscheduled absenteeism — overtime existing; grievance allowed. *Re Regional Municipality of Niagara and Canadian Union of Public Employees, Local 1287; Poulsen grievance*, May 5, 1975. Majority: O'Shea, Keck — nine pages; dissent: Swayze — two pages. (42)

Remedy for improper assignment — in kind remedy appropriate; grievance to exercise remedy within reasonable length of time. *Re Rothmans of Pall Mall Canada Limited and Tobacco Workers' International Union, Local 319; Coppola grievance*, May 9, 1975. Shime — three pages. (43)

Work performed on Saturday — part of regular schedule; premium rate not applicable; grievance dismissed. *Re Fittings Limited and United Steelworkers of America, Local 1817; policy grievance*, June 21, 1974. Majority: Weatherill, Morley — eight pages; dissent: Ross — one page. (44)*

Work voluntarily performed on scheduled day off — overtime rate payable only if work compulsory; no premium rate payable. *Re Steel Company of Canada Limited and United Steelworkers of America, Local 1005; Hammond grievance*, May 23, 1975. Majority: Beatty, Storie — 11 pages; dissent: Walsh — three pages. (45)

Overtime Pay

Assignment of overtime work — grievor carrying out instructions of superior, entitled to overtime; grievance allowed. *Re International Nickel Company of Canada Limited and United Steelworkers of America; Patterson grievance*, May 16, 1975. Hinnegan, McDonald, Heintzman — six pages. (46)

Part-time Employees

Grievor considered as part-time employee. *Re Empress Hotel and Hotel and Restaurant Employees and Bartenders International Union, Local 604; Wright grievance*, May 12, 1975. Majority: Petrie, Hollend — two pages; dissent: How — three pages. (47)

Procedure

Access to hearings — hearings not open to public. *Re Toronto Star Limited and Toronto Newspaper Guild, Local 87; Hoy grievance*, May 12, 1975. Majority: Adams, Borden — 41 pages; dissent: Granatstein — four pages. (48)*

Non-suit: employee required to elect whether to call evidence before proceeding with motion. *Re Bridge and Tank Company of Canada Limited and United Steelworkers of America* — see (26), *supra*. (49)*

Promotion

Appointment of group leader — company not obliged to go outside the particular group for candidates; grievance dismissed. *Re Greening Donald Limited and United Steelworkers of America, Local 6339; Dion grievance*, May 19, 1975. Majority: Weatherill, Byers — seven pages; did not concur: Berry. (50)

Temporary assignment — grievor holding necessary qualifications; grievance allowed. *Re Rothmans of Pall Mall Canada Limited and Tobacco Workers' International Union; Eurke grievance*, May 8, 1975. Shime — four pages. (51)

Temporary vacancies — no absolute obligation to promote the senior qualified person; grievance dismissed. *Re Steel Company of Canada Limited and United Steelworkers of America, Local 1005; Drury grievance*, October 28, 1974. Majority: Weatherill, Morley — eight pages; dissent: Walsh. (52)

Safety

Safety shoe subsidy — company not obliged to pay percentage subsidy on any boot regardless of expense; grievance dismissed. *Re Crane Canada Limited and International Molders and Allied Workers Union, Local 3; De Jong grievance*, May 19, 1975. Majority: Weatherill, Robinson — six pages; did not concur: Wohl. (53)

Scheduling of Work

Change in shift schedule; elimination of paid lunch period — grievance dismissed. *Re Duplate Canada Limited and United Automobile Workers, Local 1661; group grievance*, May 6, 1975. Curtis — six pages. (54)

Seniority

Bumping rights — no requirement that employee having least seniority be bumped; no violation of collective agreement. *Re Barber-Ellis of Canada Limited and United Automobile Workers, Local 397; English grievance*, May 15, 1975. Brown — seven pages. (55)

Portability — employee transferred from managerial position to hourly-rated position retaining seniority; discharge grievance arbitrable. *Re Espanola General Hospital and Canadian Union of Public Employees, Local 1332; policy grievance*, May 20, 1975. Majority: O'Connor, McVey — seven pages; dissent: Valin — three pages. (56)*

Qualifications for promotion — company acted unfairly and unreasonably; company ordered to promote grievor or other applicants. *Re International Nickel Company of Canada Limited and United Steelworkers of America, Local 6500; Beaudry grievance*, January 24, 1975. Gorsky — 20 pages; dissent: Stone — two pages; dissent: Seguin — three pages. (57)

Qualifications for promotion — evidence not establishing grievor equally qualified; no evidence of bad faith of company — grievance dismissed. *Re Consolidated Bathurst Packaging Limited and International Woodworkers of America; Perroni grievance*, April 23, 1975. Majority: Gorsky, Robinson — seven pages; dissent: Pilkey. (58)

(1) Qualifications for promotion — grievor lacking necessary qualifications; grievance dismissed. (2) Trial period — senior employee lacking necessary qualifications not entitled to trial period to prove competence. *Re Canadian Carborundum Company Limited and United Steelworkers of America, Local 5953; Hardy grievance*, April 30, 1975. Majority: Kruger, Chase — seven pages; dissent: Sharp — two pages. (59)

Qualifications for promotion — successful applicant better qualified; grievance dismissed. *Re Ottawa Civic Hospital and Canadian Union of Public Employees, Local 1580; Apsimon grievance*, July 31, 1974. Majority: Weatherill, Whittaker — ten pages; dissent: Kearney — four pages. (60)

Qualifications for promotion: position awarded junior employee with better qualifications — no violation of collective agreement. *Re Marsland Engineering Limited and United Automobile Workers; Mugford grievance*, May 26, 1975. Majority: Brown, Boehmer — 12 pages; dissent: Sutter — one page. (61)

Qualifications for promotion: senior grievor lacking necessary skills; no evidence of discriminatory action by employer; grievance dismissed. *Re International Nickel Company of Canada Limited and United Steelworkers of America; Crispin grievance*, May 16, 1975. Majority: O'Shea, Winkler — nine pages; dissent: Pudge. (62)

Qualifications where lay-off — senior grievor qualified to perform work; grievance upheld, compensation awarded. *Re Canadian Trailmobile Limited and United Automobile Workers, Local 397; McCauley grievance*, May 27, 1975. Weatherill — six pages. (63)

Qualifications where lay-off — ability equal; grievor entitled to job; grievance allowed. *Re Fleet Manufacturing Limited and International Association of Machinists and Aerospace Workers, Lodge 171; Findlay grievance*, May 15, 1975. Charney, Wren, Marchand — six pages. (64)

Qualifications where lay-off — grievance dismissed. *Re Corporation of Town of Smiths Falls and Canadian Union of Public Employees, Local 1664; Webb grievance*, April 22, 1975. Simmons, Cyr, Henry — eight pages. (65)

Temporary demotion — no right to bump junior employees; grievance dismissed. *Re International Nickel Company of Canada Limited and United Steelworkers of America; Okanik grievance*, September 16, 1974. Majority: Weatherill, Stone — nine pages; dissent: Keck — five pages. (66)

Sick Pay

Voluntary operation — benefits only available from time complications set in; entitled to benefits during plant shut-down. *Re Barber-Ellis of Canada Limited and United Automobile Workers, Local 397; Willmott grievance*, April 21, 1975. Brown — seven pages. (67)*

Transfer

Delay in acting upon request — no bad faith; grievance dismissed. *Re International Nickel Company of Canada Limited and United Steelworkers of America, Local 6500; Neville grievance*, April 28, 1975. Majority: Gorsky, Stone — five pages; dissent: McDonald — two pages. (68)

Temporary assignment to a less skilled position — constituting transfer; grievance allowed. *Re Toronto Star Limited and Toronto Newspaper Guild, Local 37; union grievance*, May 8, 1975. Beatty, Schmidt, Jaffary — 19 pages. (69)

Vacation Pay

Entitlement to increased benefits — benefits accruing at end of vacation year; grievance dismissed. *Re Ontario Malleable Iron Company Limited and United Steelworkers of America, Local 1500; Van Dusen grievance*, April 24, 1975. Majority: O'Shea, Binning — seven pages; dissent: McGraw — two pages. (70)

Vacations

Sick leave coinciding with scheduled vacation period — grievor considered to be on vacation; grievance allowed with compensation. *Re International Nickel Company of Canada Limited and United Steelworkers of America, Local 6500; Mimeault grievance*, April 4, 1975. Majority: Gorsky, Guillet — 12 pages; dissent: Heintzman — 11 pages. (71)*

Wages

Calculation of sales commissions; company changing standard of "net sales" during collective agreement — no violation of collective agreement. *Re Weston Bakeries Limited and Milk and Bread Drivers, Dairy Employees, Caterers and Allied Employees, Local 647; group grievance*, June 14, 1974. Majority: Weatherill, Bowman — seven pages; dissent: Thomson — one page. (72)

Change from incentive system to measured day system — change to be permanent; grievance allowed. *Re GSW Appliances Limited and United Steelworkers of America, Local 3129; group grievance*, May 6, 1975. Shime — four pages. (73)

Deduction of overpayment — no violation of agreement or *The Employment Standards Act*. *Re International Nickel Company of Canada Limited and United Steelworkers of America, Local 6500; Bertrand grievance*, May 6, 1975. Majority: Gorsky, Filion — 16 pages; dissent: McDonald. (74)

Determination of pay level after training period — training period too long; grievance allowed in part but no compensation awarded. *Re Alcan Canada Foils and Printing Specialties and Paper Products Union, Local 466; Boddington, Bursley grievance*, April 30, 1975. Shime, Noonan, Tate — 14 pages. (75)

Incentive pay: incentive base rate to be based on day-work rate for job grade under premium day-rate plan — grievance upheld. *Re ESB Canada Limited and International Union of Electrical, Radio and Machine Workers, Local 512; policy grievance*, May 26, 1975. Majority: Weatherill, Aslin — 12 pages; dissent: Sargeant — 12 pages. (76)*

Increments for previous experience — grievors not to be denied increments by virtue of their being hired prior to collective agreement; grievance allowed. *Re Porcupine Health Unit, Timmins and Nurses Association* — see (28), *supra*. (77)

Minimum guarantee — not applicable where partial shut-down of operation resulting from strike of other employees; grievance dismissed. *Re Air Canada and Canadian Air Line Flight Attendants Association; Gregoire et al grievances*, March 10, 1975. Majority: Brown, Drmaj — 12 pages; did not concur: Smeal. (78)

Rates of pay for new job classifications: union failing to prove rates inconsistent with rate structure of collective agreement; grievance dismissed. *Re Daal Specialties (Canada) Limited and United Automobile Workers, Local 1474; union grievance*, May 26, 1975. Brown — eight pages. (79)

Welfare Plans

Refusal by insurer to pay benefits — employer only obligated to provide insurance; no violation of collective agreement. *Re Foster Wheeler Limited and United Steelworkers of America, Local 6519; policy grievance*, May 20, 1975. Weatherill — nine pages. (80)*

Refusal by insurer to pay benefits — not a matter involving administration of collective agreement; grievance dismissed. *Re Consumers Glass Company Limited and United Glass and Ceramic Workers of North America, Local 200; Csaszar grievance*, June 26, 1974. Majority: Weatherill, Osler — six pages; dissent: Montgomery — three pages. (81)

Work Assignment

Priority of assignment between home and foreign terminal truckers — no violation of collective agreement; grievance dismissed. *Re Overland Western Limited and General Truck Drivers Union; group grievance*, May 1, 1975. Shime, Kennedy, Goudge — 13 pages. (82)

Trade jurisdiction protected by sub-contracting restrictions — violation of collective agreement declared. *Re Comstock International Limited (by Toronto Sheet Metal and Air Handling Group) and Sheet Metal Workers' International Union, Local 30; union grievance*, April 26, 1975. Majority: Brown, Kobryn — 24 pages; dissent: Tamblyn — six pages. (83)

Violation of company practice re unloading — no compensation allowed; grievance dismissed. *Re Thibodeau Express Limited and Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 880; Logan grievance*, May 6, 1975. Majority: Shime, Kobryn — five pages; addendum (dissent): Fosberry — six pages. (84)

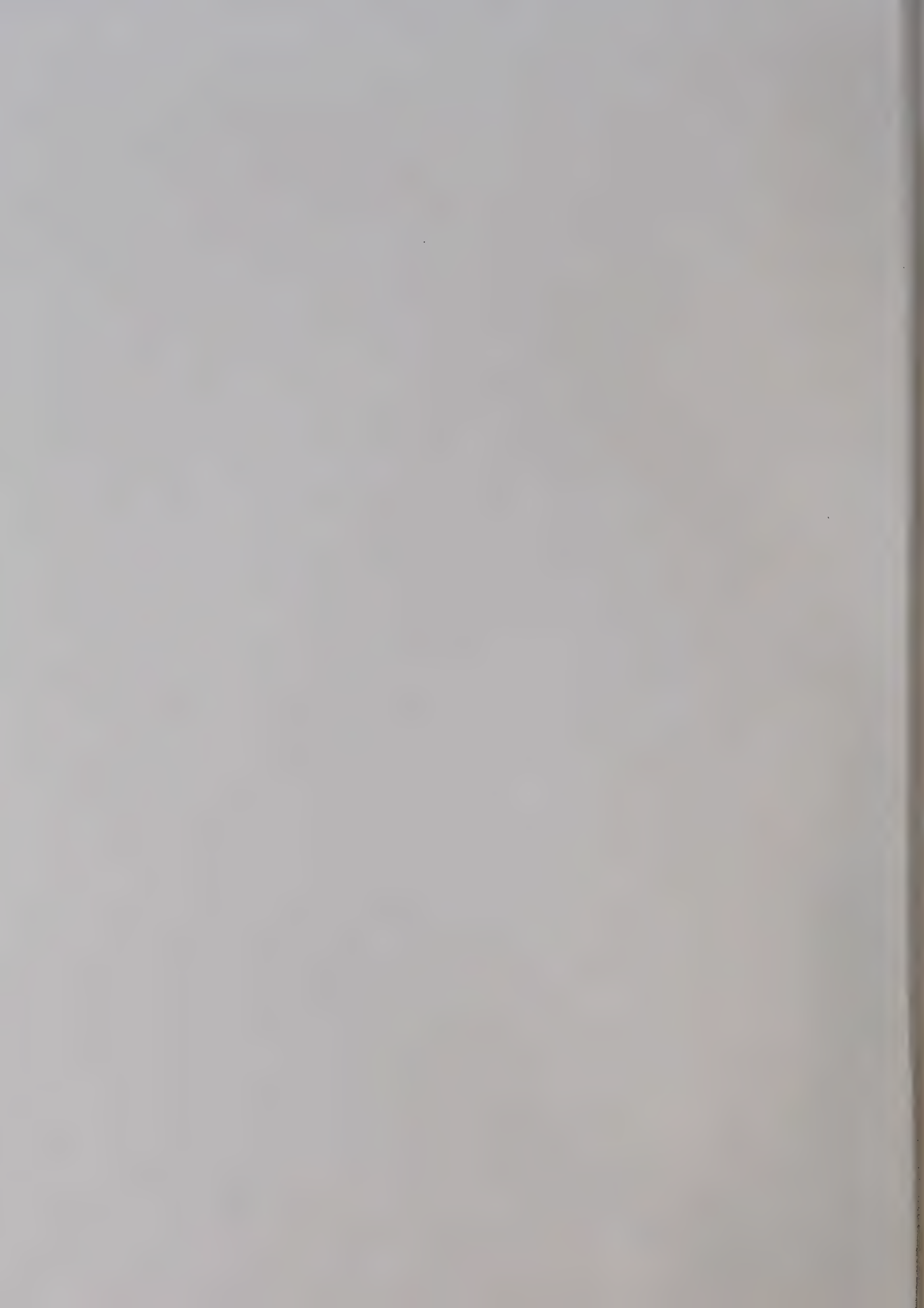
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The attention of chairmen of boards of arbitration and sole arbitrators is drawn to the provision of Section 6(2) of the Regulation, which reads:
6.—(2) Every arbitrator shall, within ten days of issuing an award, file a copy thereof with the Commission. This provision would apply to all arbitrators approved under The Ontario Labour-Management Arbitration Commission Act and regardless of whether they were appointed as chairmen or sole arbitrators pursuant to the Act, by the parties or by the Minister.

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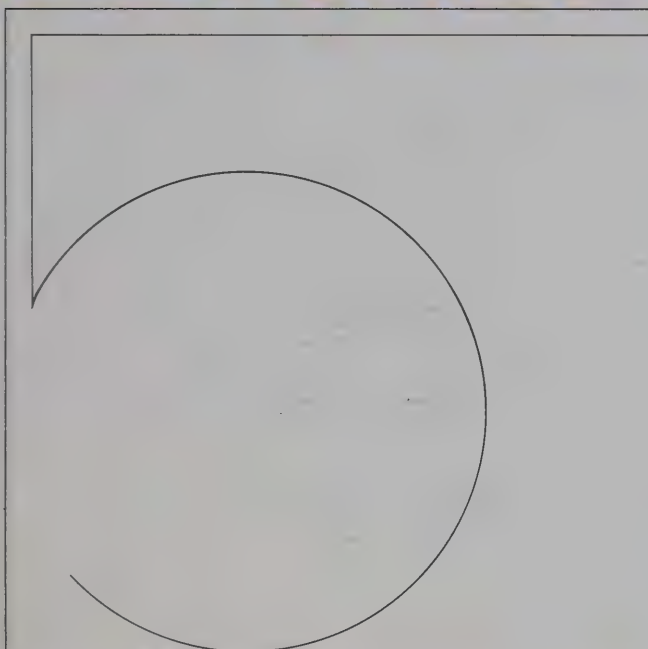
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Arbitration Commission
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Awards

The following awards were filed with the Commission during the month of June, under Section 6(2) of Ontario Regulation 635, R.R.O. 1970.

The summary was prepared at the Faculty of Law, Queen's University, under the supervision of C.G. Simmons, B.A., B.C.L., LL.D., and D.D. Carter, B.A., LL.B., B.C.L.

*Indicates award to be reported in full or in part in *Labour Arbitration Cases*.

Arbitrability

Grievance concerning promotion: collective agreement containing unusual clause limiting arbitration — promotion grievance not arbitrable. *Re Greb Industries Limited and United Shoe Workers of America; Becker grievance*, May 2, 1975. Rayner, Bruder, Stringer — four pages. (1)

Withdrawal of earlier grievance "without prejudice" to right to re-file similar grievance in future — grievance arbitrable. *Re Union Carbide Canada Limited and United Steelworkers of America, Local 6962; Procher grievance*, March 21, 1975. Majority: O'Shea, Van Gelder — 17 pages; dissent: Berry (2)*

Bargaining Unit

Ontario Labour Relations Board making determination under section 95(2) of *The Ontario Labour Relations Act* defining bargaining unit by agreement of parties. *Re Corporation of Town of Fort Frances and Canadian Union of Public Employees, Local 65; union grievance*, May 23, 1975. Aggarwal, Wolder, Blasky — 15 pages. (3)

Timekeepers — excluded as office staff. *Re Union Carbide Canada Limited and United Steelworkers of America* — see (2), *supra*. (4)*

Board of Arbitration

Jurisdiction to issue declaratory award to comply with statute: board having no jurisdiction to apply statute without reference to collective agreement — request for declaration denied. *Re: International Nickel Company of Canada Limited and United Steelworkers of America; Grant grievance*, June 9, 1975. Majority: Rayner, Winkler — ten pages; dissent: Seguin. (5)

Classification

Duties of higher classification alleged; no violation of collective agreement — grievance dismissed. *Re Toronto Hydro-Electric System and Canadian Union of Public Employees, Local 1; union grievance*, June 5, 1975. Anderson — seven pages (6)

Higher classification entailing “responsibility” for ordering and inventory — no “responsibility” for performance of duties; grievance dismissed. *Re York County Board of Education and Ontario Secondary School Teachers’ Federation; Mallette grievance*, May 22, 1975. Majority: Brown, Riggs — 13 pages; dissent: Willis — three pages. (7)

Merger of two classifications established by company — collective agreement breached. *Re International Nickel Company of Canada Limited and United Steelworkers of America; union grievance*, May 26, 1975. Palmer, Aubert, Sanderson — nine pages; addendum; Sanderson — two pages. (8)

New job title — no change in work requirements, not a new classification; grievance dismissed. *Re Standard-Modern Tool Company Limited and United Steelworkers of America; policy grievance*, June 18, 1975, Shime, Murray, Nicol — four pages. (9)

Collective Agreement

Incorporation by reference — extent to which pension plan incorporated in collective agreement; board having no jurisdiction to determine extent of contributions. *Re Board of Education for the City of Toronto and Canadian Union of Public Employees, Local 1325; policy grievance*, May 14, 1975, Majority: Palmer, Sanderson — 12 pages; dissent; Brodie — three pages. (10)*

Damages

Calculation of damages where unjust discharge — determination of actual loss. *Re Genair (1961) Limited and United Automobile Workers; Burgio, Dufour grievances*, May 29, 1975. Supplementary award: McLaren — seven pages; appendix: four pages. (11) See also Vol 5,4 (30)

Discharge

Absence without leave; failure to report after vacation — mitigating circumstances; reinstatement without loss of seniority and without compensation. *Re Consumers Gas Company and International Chemical Workers’ Union, Local 513; Coxall grievance*, June 19, 1975. Majority: Brown, Nielsen — 16 pages; dissent: Healy — two pages. (12)

Absence without leave; grievor injured in car accident — obeyed his doctor’s orders; discharge not justified. *Re Canadian Ohio Brass Company Limited and International Chemical Workers’ Union, Local 345; Roberto grievance*, June 13, 1975. Majority: Shime, Simon — eight pages; dissent: Cameron — five pages. (13)

Absence without leave; vacation taken contrary to collective agreement because of confusion on grievor’s part — substitution of one-month suspension. *Re Community Telephone Company of Ontario Limited and United Steelworkers of America, Local 1034; Hyatt grievance*, June 25, 1975. Shime — two pages. (14)

Accident with company’s truck — no fault of grievor; discharge not justified. *Re Class Freight Lines Limited and Brewery Workers Local Union 173; Woodburn grievance*, May 29, 1975. Majority: Brown, F.C. Johnston — 16 pages; dissent: Houck — four pages. (15)

Consumption of alcoholic beverages while on duty — penalty too harsh; one month’s suspension substituted. *Re Noront Steel Limited and United Steelworkers of America, Local 6363; Deni grievance*, June 11, 1975. Shime — seven pages. (16)

(1) Culminating incident — doctrine not applicable where its effect would be to allow employer to raise new grounds for discharge. (2) Dishonesty; falsification of reasons for absence — discharge justified. (3) Substitution of lesser penalty — not justified where conduct repeated. *Re Sasso Disposal Limited and Teamsters’ Union, Local 880; Sharmin grievance*, June 4, 1975. Majority: Gorsky, Sefton — 25 pages; dissent: Kobryn — two pages (17)*

Culminating incident alleged — previous disciplinary record not justifying treating final incident as culminating; reinstatement without compensation. *Re SKF Manufacturing of Canada Limited and International Association of Machinists and Aerospace Workers, Local 901; Rogers grievance*, June 11, 1975. Majority: Shime, Wren (including addendum of Wren) — 18 pages; dissent: Murray — two pages. (18)*

Culminating incident: unsatisfactory work performance — discharge justified. *Re Anaconda American Brass Limited and United Automobile Workers, Local 399; Clemmet grievance*, June 24, 1975. O'Shea — 20 pages. (19)

Dishonesty: employer's property in possession of grievor — just cause for discipline, isolated act not ground for discharge; four-month suspension substituted. *Re Toronto East General Hospital Incorporated and Service Employees International Union; Hogan grievance*, June 12, 1975. Majority: Beatty, Hamilton — 26 pages; dissent: Filion — two pages. (20)*

Failure to answer recall within time limit — no ground for discharge; grievor fully reinstated. *Re Direct Winters Transport Limited and Teamster's Union, Local 880; Wood grievance*, May 23, 1975. Majority: O'Shea, Kobryn — 15 pages; dissent: Clark — two pages. (21)*

Failure to notify of absence in breach of employer's rule — rule reasonable and not in conflict with collective agreement; discharge justified. *Re Stewart-Warner Corporation of Canada Limited and United Automobile Workers, Local 1538; Graham grievance*, June 6, 1975. Simmons — six pages. (22)

Insubordination: assault on supervisor and abusive language — discharge not warranted, suspension from incident to date of award substituted. *Re Davis Lumber Company Limited and United Brotherhood of Carpenters and Joiners, Local 2737; Bendig grievance*, June 13, 1975. Curtis, Manson, Sergeant — 12 pages. (23)*

Irregular transaction with customer not amounting to theft — no satisfactory explanation; poor work performance; grievance dismissed. *Re Coca-Cola Limited and United Brewery, Flour, Cereal, Soft Drink and Distillery Workers; Bruce grievance*, June 26, 1975. Shime — eight pages. (24)

Theft of company property; goods of no value to company — discharge unjustified; written warning substituted. *Re Hill Refrigeration of Canada Limited and United Steelworkers of America, Local 6547; Casey grievance*, June 2, 1975. Majority: O'Shea, Nicol — 13 pages; dissent: Mattina. (25)

Treatment of patient — disciplining of infant patient not improper; reinstatement with compensation. *Re Victoria Hospital Corporation and Nurses' Association; George grievance*, June 5, 1975. Majority: Weatherill, Walsh — 11 pages; dissent: Paulin — four pages; addendum: Weatherill — two pages. (26)*

Violation of company rules and statutory regulations jeopardizing relations with customer — just cause for discipline; reinstatement without compensation. *Re Municipal Tank Lines Limited and Canadian Tank Lines Union; Phillips grievance*, May 15, 1975. Majority: O'Shea, Trower — 12 pages; dissent: Wightman — two pages. (27)

Discipline

(1) Absence from work station — suspension for balance of shift plus one day with compensation for excess discipline; (2) pre-recording inspection results — not established by company. *Re Steel Company of Canada Limited and United Steelworkers of America, Local 1005; Sisson grievance*, April 23, 1975. Brandt, Sharp, Storie (concur in result) — 14 pages; addendum: Storie — two pages. (28)

Criminal charge for assault at union hall laid against grievor — suspension pending dismissal of charge justified. *Re Bundy of Canada Limited, Sinterings Division and United Steelworkers of America, Local 6012; Ciccio grievance*, June 9, 1975. Majority: O'Shea, Phelps — 13 pages; dissent: Reeds. (29)*

(1) Grievor sent home during shift — action non-disciplinary; (2) Insubordination: refusal to carry out instructions on grounds of safety: belief *bona fide* but unreasonable — disciplinary warning justified. *Re International Nickel Company of Canada Limited and United Steelworkers of America* — see (5), *supra*. (30)

Insubordination: abusive and threatening remarks directed at superintendent — suspension justified. *Re Canadian Industries Limited and United Steelworkers of America, Local 13328; Stoodley grievance*, June 6, 1975. Majority: O'Shea, Healy — 12 pages; dissent: Mayne — two pages. (31)

Insubordination: refusal to follow instructions — refusal not established; grievance allowed. *Re Ford Motor Company of Canada Limited and United Automobile Workers, Local 707; Rondeau grievance*, May 6, 1975. Palmer — six pages. (32)

Procedure: failure to give written notice of discipline as soon as possible after investigation — company in violation of collective agreement; declaratory relief granted. *Re Ford Motor Company of Canada Limited and United Automobile Workers, Local 707; policy grievance*, May 6, 1975. Palmer — five pages. (33)

Refusal to work overtime — company right to require reasonable amount of overtime; three-day suspension justified. *Re Swift Canadian Company Limited and Canadian Food and Allied Workers, Local P1105; Russworm et al grievances*, May 23, 1975. Majority: Lang, Sanderson — seven pages; dissent: Walsh — two pages. (34)

Estoppel

Alleged agreement to job classification merger: no evidence of agreement — union not estopped from processing grievance. *Re International Nickel Company of Canada Limited and United Steelworkers of America* — see (8), *supra*. (35)

Deferral of grievance pending outcome of trial promotion — no evidence of settlement nor abandonment; estoppel not applicable. *Re Can-Car Division of Hawker Siddeley Canada Limited and Office and Professional Employees International Union, Local 81; Hobbs et al grievance*, June 14, 1975. Aggarwal — 20 pages. (36)

Failure to object to practice of not posting certain job vacancies — no evidence of agreement; estoppel not applicable. *Re Lake Ontario Steel Company Limited and United Steelworkers of America, Local 6571; policy grievance*, June 11, 1975. Majority: O'Shea, Ross — seven pages; dissent: McGowan — one page. (37)

Past practice at variance with plain meaning of agreement — estoppel not applicable. *Re Dominion Stores Limited and Retail, Wholesale and Department Store Union, Local 414; Abrams grievance*, June 21, 1975. Majority: Curtis, Hall — nine pages; did not concur: White. (38)

Evidence

Location of onus — secondary onus not shifting to employer in circumstances. *Re International Nickel Company of Canada Limited and United Steelworkers of America, Local 6500; Tobin grievance*, May 27, 1975. Gorsky, Sanderson, Pudge — eight pages. (39)*

Unsworn medical reports — admissible even though doctors not appearing; opinion of grievor's doctor preferred over opinion of company's specialist. *Re Canadian Ohio Brass Company Limited and International Chemical Worker's Union* — see (13), *supra*. (40)

Grievance Procedure

(1) Employer unwilling to attend grievance meeting within required time — union entitled to proceed to arbitration. (2) Timeliness — grievances presented within five days of lay-off; grievances timely — preliminary objections dismissed. *Re Fabricated Metals and Stamping Limited and United Automobile Workers, Local 222; Campbell et al grievances*; undated award, filed June 3, 1975. Preliminary award: Beatty — 14 pages. (41)*

Timeliness — directory time limits; grievance arbitrable. *Re Morissette Manufacturing and Sales Limited (Bit Division) and United Steelworkers of America; Perron grievance*, May 22, 1975. Majority: O'Shea, Farrell — nine pages; dissent: Barnard. (42)

Timeliness — grievance filed within time limits of collective agreement; grievance arbitrable. *Re Dominion Stores Limited and Retail, Wholesale and Department Store Union* — see (38), *supra*. (43)

Timeliness — mandatory time limits; grievance dismissed. *Re Toronto Brick Company and United Glass and Ceramic Workers of North America, Local 209; Mazur grievance*, June 10, 1975. Brown, Phelps, Gower — eight pages. (44)

Timeliness — mandatory time limits; doctrine of waiver inapplicable; grievance dismissed. *Re Sperry Gyroscope (Ottawa Division) Sperry Rand Canada Limited and United Automobile Workers; Boyce grievance*, May 9, 1975. Majority: Roberts, Winkler — nine pages; dissent: Dowell. (45)

Timeliness — time running from when grievance discussed with supervisor; grievance arbitrable. *Re Can-Car Division of Hawker Siddeley Canada Limited and Office and Professional Employees International Union* — see (36), *supra*. (46)

Hiring Hall

Compilation of out-of-work list: union business manager using discretion — union ordered to follow mandatory procedures outlined in its by-laws in compiling work lists. *Re Waffle Electric Limited and International Brotherhood of Electrical Workers, Local 773; employer grievance*, May 23, 1975. Kruger — 12 pages. (47)*

Holiday Pay

Qualifying shifts; lay-off prior to holiday — last regular shift worked; grievance allowed. *Re Morissette Manufacturing and Sales Limited (Bit Division) and United Steelworkers of America* — see (42), *supra*. (48)

Sick leave period including holiday — grievor entitled to both holiday pay and weekly indemnity benefit; grievance allowed. *Re Truck Engineering Limited and United Automobile Workers, Local 636; Loosley grievance*, April 18, 1975. Majority: O'Shea, Blackburn — 11 pages; dissent: von Veh. (49)*

Illness

Physical fitness to perform job; employer justified in not rehiring until fitness certified; grievance dismissed. *Re R.J. Simpson Manufacturing Company (Canada) Limited and United Automobile Workers, Local 1738; Hopkins grievance*, June 17, 1975. Weatherill — nine pages. (50)

Job Evaluation

Change in rating — employer not establishing change in methods; grievance allowed. *Re Savage Shoes Limited and Boot and Shoe Workers Union, Local 812; Rigby grievance*, May 31, 1975. T.C. Graham — four pages. (51)

Job Posting

Lead hand job — not a separate classification; pay rate determined by reference to another classification; no obligation requiring job posting — grievance dismissed. *Re Bundy of Canada Limited and United Automobile Workers, Local 1285; Luff et al grievances*, May 29, 1975. Brandt — eight pages. (52)*

Lay-off

Transfer out of bargaining unit because of lack of work — entitled to lay-off allowance; grievance allowed. *Re Northern Electric Company Limited and United Automobile Workers, Local 1525; Shill, Birch grievances*, June 13, 1975. Weatherill — seven pages. (53)*

Overtime

Distribution — collective agreement not specifying how overtime work to be distributed among employees; grievance dismissed. *Re American Motors (Canada) Limited and United Automobile Workers, Local 1258; Sibthorp, Werbitsky grievances*, June 6, 1975. Simmons — five pages. (54)

Distribution — no clause in collective agreement providing for distribution of overtime — distribution at discretion of company; grievance dismissed. *Re Crothers Limited and United Automobile Workers; Chatten grievance*, June 5, 1975. Majority: Palmer, Dinsdale — four pages; dissent: Blackburn — one page. (55)

Pensions

Extent of contributions to Ontario Municipal Employees Retirement System to be determined under pension plan; grievance dismissed. *Re Board of Education of the City of Toronto and Canadian Union of Public Employees* — see (10), *supra*. (56)*

Procedure

Adjournment of hearing to consider preliminary objections — not an automatic procedure; matter of discretion; principles outlined. *Re Fabricated Metals and Stampings Limited and United Automobile Workers* — see (41), *supra*. (57)*

Promotion

Bidding down — grievor not permitted to bid down; grievance dismissed. *Re Northern Electric Company Limited and United Automobile Workers, Local 1837; Smith grievance*, June 9, 1975. Weatherill — seven pages. (58)

Procedure — procedure followed neither fair nor reasonable; issue remitted for re-determination; grievance allowed. *Re Rahn Metals and Plastics Limited and United Steelworkers of America, Local 6609; Milne grievance*, June 7, 1975. Fraser — nine pages. (59)*

Res Judicata

Earlier grievances not adjudicated — principle of *res judicata* not applicable. *Re Can-Car Division of Hawker Siddeley Canada Limited and Office and Professional Employees International Union* — see (36), (46), *supra*. (60)

Scheduling of Work

Prior notice of shift change not required where emergency — emergency need not occur locally; grievance dismissed. *Re Her Majesty the Queen in right of the Province of Ontario and Ontario Provincial Police Association, Incorporated, Pidgeon grievance*, June 13, 1975. Majority: Shime, Clawson — five pages; dissent: Scott — three pages. (61)*

Supplementary agreement to reduce number of shifts — reduction applicable to all employees; grievance allowed. *Re Weldwood of Canada Limited and Lumber and Sawmill Workers' Union, Local 2693; union grievance*, May 16, 1975. Aggarwal, Bickford, Wren — 15 pages. (62)

Seniority

Qualifications for part-time work — grievor less qualified; grievance dismissed. *Re Dominion Stores Limited and Retail, Wholesale and Department Store Union, Local 414; Helka grievance*, April 29, 1975. Palmer, Reekie, White — four pages. (63)

Qualifications for promotion — grievor lacking required qualifications; grievance dismissed. *Re Corporation of Town of Fort Frances and Canadian Union of Public Employees, Local 65; Salchert grievance*, May 23, 1975. Aggarwal, Wolder, Blasky — six pages. (64)

Qualifications for promotion — grievor less qualified; grievance dismissed. *Re Northern Electric Company Limited and United Automobile Workers, Local 27; Craig grievance*, May 13, 1975. Palmer — six pages. (65)

Qualifications for promotion to supervisory position — grievors failing to demonstrate qualifications; grievance dismissed. *Re Corporation of Town of Lindsay and Canadian Union of Public Employees, Local 855; Houghton et al grievance*, June 6, 1975. Majority: Weatherill, Reid — nine pages; dissent: How — three pages. (66)

Sick Pay

Ability to perform work — grievor unable to perform normal work during absence; entitled to full benefits. *Re Barber-Ellis of Canada Limited and United Automobile Workers, Local 397; Wiltsie grievance*, May 22, 1975. Palmer — six pages. (67)

Entitlement during illegal strike — not established that grievor was ill; grievance dismissed. *Re Outboard Marine Corporation of Canada Limited and United Steelworkers of America, Local 5009; O'Brien grievance*, June 13, 1975. Andrews — seven pages. (68)

Withholding of payment for initial days of third and subsequent sickness discretionary; general policy of withholding payment invalid. *Re Freeport Hospital and London and District Building Service Workers Union, Local 220; policy, Delves grievances*, June 6, 1975. Majority: Brown, Walsh — eight pages; dissent: Phelps — two pages. (69)

Travel Allowance

Refusal to pay travel allowance during temporary transfer — violation of collective agreement; grievor entitled to expenses. *Re Dominion Stores Limited and Retail, Wholesale and Department Store Union* — see (38), (43), *supra*. (70)

Time travelling to work denied — on duty from time of leaving home; grievances allowed. *Re Canadian National Railway Company Telecommunications Department and Canadian Telecommunications Union, Division 43; Charron et al grievances*, June 19, 1975. Majority: Brown, Pethick — nine pages; dissent: Dinsdale — four pages. (71)*

Union Officials

Denial of work opportunity alleged — shift chairman having no right to work more than his regular shift; no improper denial of work opportunity; grievance dismissed. *Re Ford Motor Company of Canada Limited and United Automobile Workers, Local 200; McAnally grievance*, May 7, 1975. Palmer — eight pages. (72)

Union Rights

Committeeman not employed for overtime — company not obliged to call in committeeman if no work available in his job. *Re Lasalle Machine Tool of Canada Limited and United Automobile Workers, Local 195; Cole grievance*, June 9, 1975. Weatherill — six pages. (73)

Vacation Pay

Retroactive vacation pay provided only to those who had taken vacation by date specified in memorandum of settlement — no violation of agreement; grievance dismissed. *Re University of Toronto and Service Employees' Union, Local 204; policy grievance*, June 5, 1975. Baum, Binning, Wren — seven pages; addendum: Binning — one page. (74)

Wages

Incentive plan change: preparation time included in calculation of incentive earnings — alteration of conditions of incentive plan; violation of collective agreement; grievance allowed. *Re GTE Automatic Electric (Canada) Limited and International Union of Electrical, Radio and Machine Workers, Local 526; group grievance*, June 2, 1975. Majority: Weatherill, Cichocki — nine pages; dissent: Healy — two pages. (75)*

Mine rescue work — rates not covered by collective agreement; grievance dismissed. *Re International Nickel Company of Canada Limited and United Steelworkers of America; anonymous grievor*, May 30, 1975. Shime, Winkler, MacDonald — seven pages. (76)

Progression of apprentices — past practice followed; grievance dismissed. *Re Crane Packing Company Limited and United Steelworkers of America; Manary grievance*, June 2, 1975. Majority: O'Shea, Gray — ten pages; dissent: Joyce. (77)

Work Assignment

Bargaining unit work alleged to be performed by foreman — allegation not proved; grievance dismissed. *Re International Nickel Company of Canada Limited and United Steelworkers of America* — see (39), *supra*. (78)*

Foreman alleged to be performing bargaining unit work — work of a supervisory nature; grievance dismissed. *Re Brockville Chemical Industries Limited and International Chemical Workers Union, Local 721; Korim grievance*, June 6, 1975. Majority: Brown, Pyle — 13 pages; dissent: Weisbach — three pages. (79)

Indirect assignment — grievor properly assigned and entitled to higher wages. *Re Dominion Stores Limited and United Steelworkers of America, Local 14045; Mallen grievance*, June 6, 1975. Hinnegan — four pages; addendum — three pages. (80)

Supervisory work withdrawn from bargaining unit — no violation of collective agreement; grievance dismissed. *Re Consolidated Bathurst Packaging Limited and International Woodworkers of America, Local 2-69; policy grievance*, June 12, 1975. Majority: O'Shea, Robinson — 15 pages; dissent: Turk — two pages. (81)*

Work formerly performed by foreman assigned to grievor — work within job description; no violation of collective agreement. *Re Knechtel Furniture Limited and International Woodworkers of America and its Local 2-500; Durham grievance*, May 23, 1975. Majority: Brown, Crockford — nine pages; dissent: Bedard. (82)

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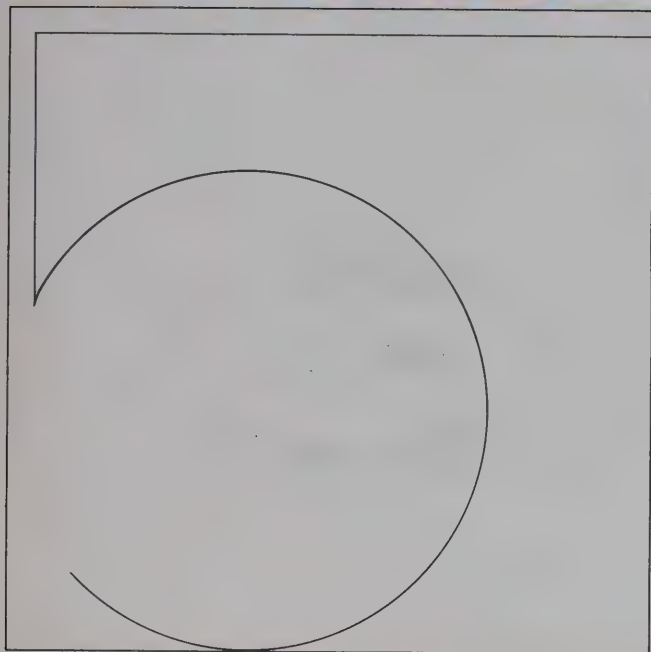
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Monthly Bulletin



The Ontario Labour-Management
Arbitration Commission

His Honour Judge Walter Little, Chairman
Mary Calarco, Registrar

The Ontario Labour-Management
Arbitration Commission
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Toronto, Ontario
M7A 1T7

Hon. Bette Stephenson, M.D., Minister
Robert D. Johnston, Deputy Minister

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Arbitrators

The following person has been approved as chairman of boards of arbitration or single arbitrator pursuant to The Ontario Labour-Management Arbitration Commission Act and Ontario Regulation 635:

McIver, T.P., Esq., Q.C., Suite 2215, 44 King Street, West, Toronto, Ontario, M5H 1G6; telephone (416) 362-6591.

The qualifications of the following persons are such that they meet the criteria laid down by the Commission, making them suitable persons to sit as sole arbitrators or chairmen of boards of arbitration, except that the criterion of mutual acceptability to unions and management has not been fully demonstrated. Although they may have had arbitration experience, they have not been mutually agreed upon a sufficient number of times in the past to enable them to meet the foregoing criterion necessary to entitle them to be accredited for inclusion

on panels. As soon as they meet this criterion they will be considered for full accreditation.

McLaren, Professor R.H., Faculty of Law, The University of Western Ontario, London, Ontario, N6A 3K7; telephone (519) 679-2790.

Roberts, Professor R.J., Faculty of Law, The University of Western Ontario, London, Ontario, N6A 3K7; telephone (519) 679-6615

Awards

The following awards were filed with the Commission during the month of July, under Section 6(2) of Ontario Regulation 635, R.R.O. 1970.

The summary was prepared at the Faculty of Law, Queen's University, under the supervision of C.G. Simmons, B.A., B.C.L., LL.D., and D.D. Carter, B.A., LL.B., B.C.L.

*Indicates award to be reported in full or in part in *Labour Arbitration Cases*.

Arbitrability

Policy grievance: time limits not differing from those for employee grievance; grievance dismissed. *Re Ralph Milrod Metal Products Limited and International Association of Machinists, Lodge 2506; policy grievance*, July 3, 1975. Schiff, Stringer, Wren — seven pages. (1)

Partial transfer of duties from higher to lower classification — no violation of collective agreement; grievance dismissed. *Re Canadian General Electric Company Limited and United Electrical, Radio and Machine Workers of America; group grievance*, March 20, 1975. Majority: Hinnegan, Byers — nine pages; dissent: Wren — six pages. (7)

Employer grievances — *prima facie* issues relating to interpretation; grievance arbitrable. *Re Corporation of the City of Ottawa and Ottawa-Carleton Public Employees' Union, Local 503; employer grievances*, August 13, 1974. Preliminary majority award: Fraser, Kelley — seven pages; dissent: Scott — four pages. (2)

Some job duties falling within higher classification — grievor entitled to higher rate of pay while performing such duties; compensation awarded, grievance upheld. *Re Canadian General Electric Company Limited and International Union of Electrical, Radio and Machine Workers, Local 544; Rodger grievance*, July 29, 1975. Majority: Weatherill, Aslin — 12 pages; did not concur: Tarasuk. (8)

Bargaining Unit

Supervisors excluded from bargaining unit — employee performing both supervisory and physical functions excluded; grievance dismissed. *Re St. Raphael's Nursing Homes Limited and London and District Building Service Workers' Union, Local 220; union grievance*, June 24, 1975. Majority: Brown, Kelly — 11 pages; partial dissent: Walsh — two pages. (3)*

Splitting duties alleged — new job created for proper business reasons; no violation of collective agreement; grievance dismissed. *Re Kodak Canada Limited and International Chemical Workers' Union, Local 159; union grievance*, June 27, 1975. Majority: Brown, McKeown — nine pages; dissent: Tate — three pages. (9)

Bereavement Leave

Grandparent's funeral — not including spouse's grandparent; grievance dismissed. *Re District of Sudbury Social Services Administration Board and Canadian Union of Public Employees, Local 207; Marshall grievance*, July 2, 1975. Majority: Godin, Bennett — ten pages; dissent: McVey. (4)*

Collective Agreement

Incorporation by reference — provision requiring compliance with provincial legislation not incorporating legislation in the collective agreement; grievance dismissed. *Re American Can of Canada Limited and Can Workers' Federal Unions; Himba, Council grievances*, July 23, 1975. Majority: Shime, Morley — seven pages; dissent: Simon — two pages. (10)*

Board of Arbitration

Remedial power where improper promotion — promotion awarded to grievor where situation not requiring exercise of employer's judgment. *Re Kemp Products Limited and Textile Workers' Union of America; Stensil grievance*, July 9, 1975. Majority: Kruger, Seymour — eight pages; dissent: Noonan — six pages. (5)*

Demotion

Just cause not established — grievance upheld. *Re Corporation of the City of Timmins and Canadian Union of Public Employees, Local 210; Brouilliard grievance*, June 27, 1975; written reasons, July 14, 1975. Johnston, De Gurse, Hatton — eight pages. (11)

Classification

Duties falling within scope of two job classifications — company entitled to assign work from either classification; grievance dismissed. *Re Kysor Industrial of Canada Limited and United Automobile Workers, Local 347; policy grievance*, July 29, 1975. Hinnegan — two pages. (6)

Discharge

Absence without leave — discharge justified; grievance dismissed. *Re Bendix Automotive Company Limited and United Automobile Workers, Local 915; Gonzales grievance*, July 18, 1975. Gorsky — 12 pages. (12)

Absenteeism and unsatisfactory work performance: physical disability likely to affect work performance in future — discharge justified. *Re Canada Stampings and Die Limited and United Automobile Workers, Local 636; Baer grievance*, July 30, 1975. Hinnegan — four pages. (13)

Alcoholism — just cause for discharge; grievance dismissed. *Re Northern Electric Company Limited and United Automobile Workers, Local 1535; Mahon grievance*, July 9, 1975. Brown — 11 pages. (14)

Assault on supervisor — just cause for discharge. *Re St. Joseph's Hospital, Toronto and Canadian Union of Public Employees, Local 1144; Dobosz grievance*, June 17, 1975. Majority: O'Shea, Ivany — 11 pages; dissent: Kitchen — two pages. (15)

Attitude toward job — unsatisfactory work performance and uncooperative behaviour proved as evidence of attitude; grievance dismissed. *Re Continuous Colour Coat Limited and United Steelworkers of America; Harvey grievance*, June 3, 1975. Majority: Abbott, Farrar — 18 pages; did not concur: Berry. (16)*

Culminating incident: failure to advise supervisor of lack of supplies — work record considered; discharge justified. *Re Rubbermaid (Canada) Limited and United Automobile Workers; Wannamaker grievance*, July 28, 1975. Weatherill — seven pages. (17)

Culminating incident: unsatisfactory work performance — discharge unjustified; four-week suspension substituted. *Re Public Utilities Commission, City of Burlington and International Brotherhood of Electrical Workers, Local 636; Tarves grievance*, July 23, 1975. Andrews, Schaefer, Stacey — nine pages; addendum: Stacey — one page. (18)

Failure to file accident report — penalty too severe; suspension substituted. *Re Trailways (Travelways) of Canada Limited and Canadian Brotherhood of Railway, Transport and General Workers; Szeler grievance*, July 18, 1975. Majority: Weatherill, Roussel — eight pages; did not concur: Wait. (19)

Horseplay — discharge unjustified; reinstatement without compensation. *Re Fiberglas Canada Limited and Oil, Chemical and Automatic Workers International Union, Local 9-14; Boucher grievance*, July 30, 1975. Hinnegan — five pages. (20)

Illegal strike — employer's letter provocative; suspension to date of award without compensation substituted. *Re Letter Carriers Union of Canada (employer) & Office and Professional Employees' International Union, Local 225; Belanger et al grievances*, July 3, 1975. Curtis — 11 pages. (21)

Lateness; reporting under influence of alcohol; insubordination — just cause of discipline; reinstatement with compensation from day of hearing. *Re Industrial Fasteners Limited and United Steelworkers of America, Local 7940; Lauzon grievance*, July 8, 1975. Weatherill — eight pages. (22) See also Vol. 5, 3(60)

Physical disability — discharge unjustified; grievor to be offered the job which he was qualified to perform. *Re Lake Ontario Steel Company Limited and United Steelworkers of America, Local 6571; Foucault grievance*, June 18, 1975. Majority: Hinnegan, Ross — six pages; dissent: McGowan. (23)

Procedure: failure to notify union of steward's discharge — discharge null and void; reinstatement plus compensation awarded. *Re Rothsay Concentrates Company Limited and Teamsters Local 879; Kuttritz grievance*, July 25, 1975. Majority: Brown, Hurd — seven pages; dissent: Brisbin. (24)

Quit alleged — grievor's actions not amounting to quit; reinstatement without compensation. *Re Gray's Department Stores and Retail, Wholesale and Department Store Union, Local 1002; Lavergne grievance*, July 8, 1975. Majority: Kruger, Reekie — six pages; dissent: Mount — 27 pages. (25)

Theft of company property alleged — not established; grievance allowed. *Re Oakville Storage and Forwarders Limited, Warehouse Deliveries (Oakville) Limited and United Automobile Workers; Lewis grievance*, July 17, 1975. O'Shea — 13 pages. (26)

Unsatisfactory work performance — employer failing to establish incompetence; grievance allowed. *Re Corporation of County of Simcoe and Service Employees Union, Local 204; Chudyk grievance*, July 28, 1975. Majority: Dunn, Wren — four pages; dissent: Robinson — two pages. (27)

Discipline

Absence without leave — penalty too harsh; suspension reduced to two days. *Re Purolator Products (Canada) Limited and United Automobile Workers, Local 1408 (Purolator Unit); Carty grievance*, July 21, 1975. Simmons — six pages. (28)

Absenteeism — no proof of culpable culminating incident; suspension not justified. *Re Allie Chemical Canada Limited and United Automobile Workers, Local 89; Beaudoin grievance*, July 4, 1975. Brandt — eight pages. (29)*

Absenteeism because of illness — three-day suspension unjustified; full compensation awarded. *Re Aimco Automotive Industries and United Steelworkers of America, Local 7574; Conforti grievance*, July 28, 1975. Weatherill — five pages. (30)

Failure to follow company safety practices — fourth step reprimand justified; grievance dismissed. *Re International Nickel Company of Canada Limited and United Steelworkers of America; Tremblay grievance*, July 21, 1975. Majority: Shime, Clark — seven pages; dissent: McDonald — two pages. (31)

Insubordination: abusive language and threats directed at supervisor — suspension justified; grievance dismissed. *Re Allied Chemical Canada Limited and United Automobile Workers, Local 89; Kay grievance*, July 4, 1975. Brandt — nine pages. (32)

Insubordination: directions carried out reluctantly and unwillingly — no insubordination; grievance allowed. *Re Allied Chemical Canada Limited and United Automobile Workers, Local 89; Fells grievance*, July 4, 1975. Brandt — seven pages. (33)

Insubordination: refusal to follow supervisor's instruction — apprehended danger not enough to justify refusal; grievance dismissed. *Re Steel Company of Canada Limited and United Steelworkers of America, Local 1005; De Podesta grievance*, June 23, 1975. Final majority award: Curtis, Stetson — eight pages; dissent: Stetson. (34) See also (38), *infra*.

Insubordination: refusal to obey direct order coupled with obscenity directed at supervisor — suspension justified. *Re Canron Limited, Eastern Structural Division and International Association of Bridge, Structural and Ornamental Iron Workers, Shopmen's Local 743; Mitrovic grievance*, June 19, 1975. Majority: O'Shea, Healy — 16 pages; dissent: Martin — three pages. (35)

Personal appearance regulations — regulation concerning hair length unreasonable and not consistently enforced; reinstatement with compensation. *Re Air Canada and Canadian Airline Flight Attendants Association; Begin grievance*, June 30, 1975. Deverell — 27 pages. (36)*

Tardiness: employer failing to establish case — written reprimand to be removed from grievor's record; grievance upheld. *Re Welland County General Hospital and Civil Service Association of Ontario; Turner grievance*, July 25, 1975. Adams, Swayze, Hunter — 23 pages. (37)

Evidence

View of workplace — all evidence not heard; union request denied. *Re Steel Company of Canada Limited and United Steelworkers of America, Local 1005; De Podesta grievance*, May 30, 1975. Interim award: Curtis, Stetson, Storie — three pages. (38) See also (34), *supra*.

Grievance Procedure

Union grievance — grievance relating to exclusion from bargaining unit constituting union grievance. *Re St. Raphael's Nursing Homes Limited and London and District Building Service Workers' Union* — see (3), *supra*. (39)*

Holiday Pay

Entitlement — condition that two or three newspapers do not publish to constitute holiday — condition satisfied; grievance allowed. *Re Toronto Star Limited and Toronto Newspaper Guild; union grievance*, June 5, 1975. Majority: Baum, Tate — nine pages; dissent: Borden — ten pages. (40)

Qualifying days: failure to report for work on qualifying days — medical certificate certifying illness; grievance upheld, holiday pay awarded. *Re Great Atlantic and Pacific Company Limited and Retail, Wholesale and Department Store Union, Local 414; Waite grievance*, July 17, 1975. O'Shea, Reekie, Whittaker — nine pages. (41)

Hours

Unilateral change — violation of collective agreement; grievance allowed. *Re Ottawa General Hospital and Nurses Association Ottawa General Hospital; policy grievance*, July 4, 1975. Shime, Sirois, Done — five pages. (42)

Illness

Refusal to allow employee to return to work as highway driver after heart attack — grievance allowed. *Re Walmer Transport Company Limited and Teamsters Union, Local 879; Joudrie grievance*, July 21, 1975. Majority: Weatherill, Hurd — ten pages; dissent: Kennedy. (43)*

Job Evaluation

Work content — no change in work content of job; grievance dismissed. *Re Steel Company of Canada Limited, Page-Hersey Works and United Electrical, Radio and Machine Workers of America, Local 523; union grievances*, March 7, 1975. Majority: Hinnegan, Morley — ten pages; dissent: Krouse — two pages. (44)

Job Vacancy

Hiring of employees from outside bargaining unit — all pre-conditions satisfied; no violation of collective agreement. *Re Allied Chemical Canada Limited and United Automobile Workers, Local 89; policy grievance*, July 4, 1975. Brandt — five pages. (45)

Maternity Leave

Entitlement to vacation pay — not entitled to receive payment or benefits for period of leave; grievance dismissed. *Re Union Gas Limited and International Chemical Workers' Union, Local 798; LaPlante grievance*, July 28, 1975. Majority: Dunn, Cook — four pages; dissent: Askin — two pages; addendum: Dunn — one page. (46)*

Overtime

Distribution — grievor did not establish improper distribution; grievance dismissed. *Re International Nickel Company of Canada Limited and United Steelworkers of America; Jacobs grievance*, June 25, 1975. Majority: H.D. Brown, D.J.M. Brown — eight pages; dissent: Pudge. (47)

Distribution — obligation to equalize overtime; compensation ordered. *Re Phillips Cables Limited and International Union of Electrical, Radio and Machine Workers of America, Local 510; Dixon, Dorman grievances*, July 10, 1975. Majority: Beatty, Millard — 24 pages; dissent: Philips — one page. (48)*

Distribution — overtime assigned as evenly as practicable; grievance dismissed. *Re International Nickel Company of Canada Limited and United Steelworkers of America, Local 6500; Laberge grievance*, July 4, 1975. Majority: Brandt, Sanderson — eight pages; dissent: Gareau. (49)

Distribution — overtime assigned equitably; grievance dismissed. *Re Canada Cement Lafarge Limited and United Cement, Lime and Gypsum Workers International Union; Oliver grievance*, July 14, 1975. Majority: Brown, Robinson — seven pages; dissent: Skinner — two pages. (50)

Distribution — regular employee not given opportunity to work overtime — grievor allowed to equalize his overtime work over reasonable time. *Re Spar Aerospace Products Limited and United Automobile Workers, Local 112; Bormans grievance*, July 7, 1975. Linden — eight pages. (51)

Distribution — temporary assignment to person holding different classification; grievance dismissed. *Re Domtar Chemicals Limited and Oil, Chemical and Atomic Workers' International Union, Local 9-683; Simmons grievance*, June 11, 1975. Majority: O'Shea, Byers — 17 pages; dissent: Basken — eight pages. (52)

Distribution — union failing to establish unfair distribution in two of three grievances; third grievor awarded compensation. *Re International Nickel Company of Canada Limited and United Steelworkers of America; Brunet et al grievances*, July 18, 1975. H.D. Brown, D.J.M. Brown, McDonald — 14 pages; partial dissent: McDonald — one page. (53)

Entitlement where change of shift schedule — rescheduling of days off not amounting to time off in lieu of overtime; grievance dismissed. *Re Pfizer Company Limited and International Chemical Workers Union, Local 768; Chevrier grievance*, July 7, 1975. Majority: Brown, Sanderson — eight pages; dissent: McIlwain. (54)

Part-time Employees

Junior employees working more hours — no obligation on company to co-ordinate work schedule on an area basis; no violation of collective agreement; grievance dismissed. *Re Dominion Stores Limited and Retail, Wholesale and Department Store Union, Local 414; Parrack grievance*, May 7, 1975. Majority: Hinnegan, White — five pages; dissent: Reekie — three pages. (55)

Procedure

Notice of hearing — adjournment to allow proper notice of arbitration to be given to employee whose position may be affected by outcome. *Re General Refractories of Canada Limited and United Steelworkers of America, Local 14857; Mous, Cavers grievances*, July 4, 1975. Preliminary award: Shime — four pages. (56)*

Seniority

Bumping rights — no breach of seniority provisions; grievance dismissed. *Re VS Services Limited and Workers Union of Queen Elizabeth Hospital (CNTU); Yohannan grievance*, July 22, 1975. Simmons — four pages. (57)

Calculation — time in non-bargaining unit position to be counted in determining seniority; grievance dismissed. *Re Allied Chemical Canada Limited and United Automobile Workers, Local 89; policy grievance*, July 4, 1975. Brandt — four pages. (58)

Qualifications for promotion — grievor unable to give reasonable indication of availability at time of posting; grievance dismissed. *Re Chromasco Corporation Limited and United Steelworkers of America, Local 4632; Wren grievance*, July 3, 1975. Shime, Richard, Gareau — four pages. (59)

Qualifications for promotion — grievor lacking requisite qualifications; grievance dismissed. *Re Corporation of City of Cornwall and Office and Professional Employees International Union, Local 452; Muir grievance*, July 15, 1975. Majority: Curtis, Alguire — six pages; dissent: B. Davidson. (60)

Qualifications for promotion — grievor's qualifications equal; grievor awarded promotion plus compensation; grievance upheld. *Re Kemp Products Limited and Textile Workers' Union* — see (5), *supra*. (61)*

Qualifications for promotion — sufficient ability not established; grievance dismissed. *Re St. Lawrence Seaway Authority and Canadian Brotherhood of Railway, Transport and General Workers; Campbell grievance*, July 16, 1975. Majority: Simmons, Morley — 12 pages; dissent: Green. (62)

Qualifications for special work assignments — senior employees to be given first opportunity; grievance upheld, compensation awarded. *Re Hill Security Limited and Warehousemen and Miscellaneous Drivers' Local Union 419; Fletcher grievance*, July 21, 1975. Majority: Shime, Robinson — eight pages; dissent: Kennedy — one page. (63)

Qualifications where lay-off — senior employee (reinstated by earlier award) entitled to bump junior employee in same job classification; grievance allowed. *Re GWG (Eastern) Limited and Amalgamated Clothing Workers of America, Local 551; McPherson grievance*, July 24, 1975. Dunn — five pages. (64)

Union Security

Non-union employees performing bargaining unit work — company required to dismiss employees refusing to join union; grievance upheld. *Re Ralph Milrod Metal Products Limited and International Association of Machinists, Local 2506; policy grievance*, July 25, 1975. Shime, Brisbin (subject to addendum), Wren — five pages; addendum: Brisbin — two pages. (65)

Wages

Incentive rates — standard base rate for incentive rates determined in accordance with collective agreement; grievance dismissed. *Re International Nickel Company of Canada Limited and United Steelworkers of America; Mustaler, O'Brien grievances*, July 18, 1975. Majority: Simmons, Winkler — nine pages; dissent: McDonald. (66)

Premium for sub-foremen — entitled to premium for all hours worked where permanent assignment of duties; grievance allowed. *Re Peterborough Public Utilities Commission, City of Peterborough and International Brotherhood of Electrical Workers, Local 1964; group grievance*, June 26, 1975. Majority: O'Shea, Nokes — 13 pages; dissent: Metcalfe — three pages. (67)*

Work Assignment

Additional duties assigned — duties properly part of job and not preventing safe performance of job; grievance dismissed. *Re Corby Distilleries Limited and Distillery Workers' Union, Local 96; group grievance*, July 4, 1975. Majority: Curtis, Mathews — seven pages; did not concur: O'Brien. (68)

Bargaining unit work performed by non-bargaining unit employee — violation of collective agreement; order that non-bargaining unit employees cease performing such work. *Re International Nickel Company of Canada Limited and United Steelworkers of America; Spencer grievance*, June 5, 1975. Majority: Simmons, McDonald — nine pages; did not concur: Stone. (69)

Temporary assignment not according to seniority — assignment of grievor would cause short change of shift contrary to policy stated in collective agreement; grievance dismissed. *Re Atlas Steels Company and Canadian Steelworkers' Union, Atlas Division; Taylor grievance*, June 9, 1975. Majority: Hinnegan, Sanderson — seven pages; dissent: Fleury. (70)

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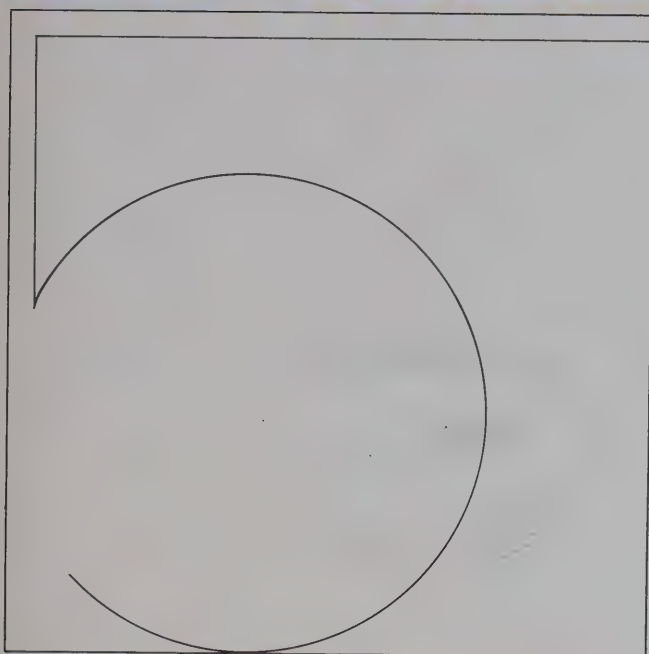
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65th Government
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Monthly Bulletin



The Ontario Labour-Management
Arbitration Commission

His Honour Judge Walter Little, Chairman
Mary Calarco, Registrar



Ontario Ministry of Labour
400 University Avenue, 14th Floor
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Hon. Bette Stephenson, M.D., Minister
Robert D. Johnston, Deputy Minister

December, 1975
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Awards

The following awards were filed with the Commission during the month of September, under Section 6(2) or Ontario Regulation 635, R.R.O. 1970.

The summary was prepared at the Faculty of Law, Queen's University, under the supervision of C.G. Simmons, B.A., B.C.L., LL.D., and D.D. Carter, B.A., LL.B., B.C.L.

*Indicates award to be reported in full or in part in *Labour Arbitration Cases*.

Arbitrability

Contracting-out of work — union bound by direction of inter-union dispute over work jurisdiction — Ontario Labour Relations Board decision binding on arbitration board; grievance not arbitrable. *Re Pigott Structures Company Limited and United Brotherhood of Carpenters and Joiners of America, Local 18; union grievance*, August 13, 1975. Majority: O'Shea, White — 13 pages; dissent: McGregor. (1)*

Timeliness — grievance filed within three days of receiving "the circumstances which gave rise to" the grievance; grievance arbitrable. *Re Corporation of the Town of Dundas "and Dundas Professional Firefighters' Association, Local 1719, International Association of Firefighters; Nelson, Place grievances*, September 9, 1975. O'Shea — 20 pages. (2)

Bargaining Unit

Employees not expressly covered by collective agreement — still falling within bargaining unit; grievance allowed. *Re Clarke Institute of Psychiatry and Service Employees' Union, Local 204; union grievance*, September 17, 1975. Anderson, Simon, Stewart — seven pages. (3)

Bereavement Pay

Entitlement: (1) applying to working days, not calendar days; (2) "funeral arrangements" broadly construed; grievance partially allowed. *Re Salvation Army Grace Hospital and Service Employees' Union, Local 210; Lewick grievance*, September 11, 1975. Majority: Ferguson, Simko — seven pages; dissent: Kavanaugh — seven pages. (4)*

Classification

Change of job classification — employer not to change classification for sole purpose of paying lower wage rate for same job duties; change of classification proper where fundamental change of job duties; grievance allowed in part. *Re Canadian Pacific Limited (Telecommunications Department) and Canadian Telecommunications Union, Division 1, United Telegraph Workers; union grievance*, September 5, 1975. Adams — 18 pages. (5)*

Merger of two classifications for business efficiency — economic conditions warranting change; grievance dismissed. *Re R. Laidlaw Lumber Company Limited and International Woodworkers of America, Local 2-700; Ambrico et al grievances*, September 26, 1975. Majority: Shime, Middleton — five pages; dissent: Chalmers. (6)

New job classification — new job established in accordance with collective agreement; grievance dismissed. *Re Falconbridge Nickel Mines Limited and Sudbury Mine, Mill and Smelter Workers' Union, Local 598; Bennett grievance*, August 22, 1975. Majority: J.L. Roberts, Winkler — 11 pages; dissent: LaChance — four pages. (7)

Demotion

Failure of company to justify demotion — reinstatement to higher position with compensation. *Re Precision Spring of Canada Limited and United Automobile Workers; White grievance*, September 16, 1975. Gorsky — six pages. (8)

(1) Seniority full-time employee returned to part-time status — amounting to extension of probationary period; demotion improper; (2) inability to perform job adequately — demotion justified; no discrimination. *Re Anson General Hospital and United Steelworkers of America, Local 13911; White grievance*, September 17, 1975. Majority: Brandt, Ames — 11 pages; dissent: Gillespie. (9)*

Discharge

Absence during shift — seven-month suspension substituted for discharge. *Re Corporation of the City of Toronto and Toronto Civic Employees Union, Local 43, CUPE; Dingle grievance*, August 28, 1975. Abbott, Paulin, Tate — 17 pages; addendum: Tate — one page. (10)

Absence from work station without permission — discharge not justified; five-month suspension substituted. *Re Brantford General Hospital and Service Employees' Union, Local 204; Hutchison grievance*, September 17, 1975. Dunn, Filion, Wren — seven pages. (11)

Absence without leave — grievor extending leave without permission; grievance dismissed. *Re I-T-E Industries Limited and International Brotherhood of Electrical Workers, Local 1590; Singh grievance*, September 11, 1975. Majority: Ferguson, Payette — nine pages; dissent: Bell — two pages. (12)

Absenteeism — culminating incident; grievance dismissed. *Re Fleet Industries and International Association of Machinists, Lodge 171; Page grievance*, September 15, 1975. Majority: Dunn, Marchand, Wren — three pages. (13)

Absenteeism; *bona fide* medical reasons — discharge unjustified; reinstatement upon conditions awarded. *Re Loblaw's Limited and Canadian Food and Allied Workers Union, Locals 175, 633; Scholten grievance*, September 5, 1975. Majority: J.L. Roberts, Simon — 21 pages; dissent: Paulin — four pages. (14)

Academic qualifications; failure to pass registration examination — just cause for dismissal; grievance dismissed. *Re Oshawa General Hospital and Nurses' Association Oshawa General Hospital; Crossman grievance*, August 26, 1975. Majority: Brown, Whittaker — 14 pages; dissent: Walsh. (15)*

Culminating incident: insubordination — discharge justified. *Re McGraw-Edison of Canada Limited and United Steelworkers of America; Francis grievance*, July 29, 1975. Majority: Hinnegan, Earle — four pages; dissent: Addis. (16).

Culminating incident: work performance unsatisfactory — just cause for discharge; grievance dismissed. *Re Uddeholm Steels Limited and United Steelworkers of America; Ballance grievance*, August 26, 1975. Majority: O'Shea, Hamilton — 12 pages; dissent: Mayne — two pages. (17)

Illegal strike — employer failing to prove grievor instigated strike: discharge not justified; reinstatement without compensation. *Re Quality Meat Packers Limited and Canadian Food and Allied Workers, Local 743; Winsor grievance*, September 19, 1975. Majority: Ferguson, Payette — seven pages; partial dissent: Hand. (18)

Inability of female employee to perform work alleged — improper assessment of grievor's qualifications; grievance allowed. *Re Aro Canada Limited and International Association of Machinists, Lodge 1817; Emburgh grievance*, August 12, 1975. Majority: Beatty, Wren — 17 pages; dissent: Payette — three pages. (19)*

Insubordination alleged — not just cause; reinstatement without loss of seniority and with compensation for wages lost. *Re Canteen of Canada Limited (Ontario) and Retail, Wholesale and Department Store Union, Local 414; Fijal grievance*, September 11, 1975. Ferguson, Nielsen, Spaxman — ten pages. (20)

Insubordination; intoxication while on duty; leaving work without permission — improper transaction conducted; discharge justified. *Re Coca-Cola Limited and United Brewery Workers; Newall grievance*, September 16, 1975. Ferguson — seven pages. (21)

Insubordination: refusal to work — discharge not justified; reinstatement without compensation. *Re Herb Fraser and Associates Limited and United Steelworkers of America, Local 7022; Warner grievance*, September 19, 1975. Majority: Adams, Cash — 20 pages; dissent: Pudge — two pages. (22)

Insubordination: threats to foremen — discharge not justified; reinstatement without compensation. *Re CIP Containers Limited and United Paperworkers, Local 872; McCran grievance*, September 12, 1975. Brown — 12 pages. (23)

Interference with work of another employee alleged — employer failing to satisfy burden of proof; grievance allowed. *Re Diwalt Industries Limited and United Steelworkers; Nigro grievance*, September 3, 1975. Majority: O'Shea, Mayne — seven pages; dissent: McCormack. (24)

Physical condition; heart condition — reinstatement subject to medical examination. *Re Wimco Steel Sales Company Limited and United Steelworkers of America, Local 6275; Krieger grievance*, September 22, 1975. Majority: Ferguson, Farrar — nine pages; dissent in part: Murray. (25)

Procedure; failure to comply with provisions of *The Fire Departments Act* — discharge nugatory; grievors reinstated. *Re Corporation of the Town of Dundas and Dundas Professional Firefighters' Association* — see (2), *supra*. (26)

(1) Quit alleged — resignation invalid; (2) dishonesty; altering drug receipts — discharge not justified in circumstances; reinstatement without compensation. *Re Fleet Industries and International Association of Machinists, Lodge 171; Bissonette grievance*, August 26, 1975. Majority: McCulloch, Wren — 15 pages; dissent: Marchand — five pages. (27)

Theft of company property — discharge justified. *Re Allied Chemical Canada Limited and United Automobile Workers, Local 1285; Cready grievance*, September 12, 1975. Andrews — four pages. (29)

Unsatisfactory work performance — discharge justified; grievance dismissed. *Re Imperial Optical Company Limited and Optical and Plastic Technicians and Allied Workers Union; Rocha grievance*, September 5, 1975. Arthurs — six pages. (30)

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Damage to company's vehicle — accident due to driver's error; penalty within range of reasonable disciplinary responses to situation; grievance dismissed. *Re Corporation of the Town of Mississauga — Transit Division and Amalgamated Transit Union, Division 107; Hindson grievance*, September 4, 1975. Majority: Beatty, Farrar — 20 pages; dissent: Wren — three pages. (31)

Failure to follow regulations — suspension not justified; removal of suspension with compensation. *Re Victoria Hospital Corporation and Nurses' Association Victoria Hospital; Schaefer grievance*, July 31, 1975. Majority: Brown, Walsh — seven pages; dissent: Rovet — one page. (32)

Failure to follow regulations re control of drugs — suspension for one day justified; grievance dismissed. *Re Victoria Hospital Corporation and Nurses' Association Victoria Hospital; Belfry grievance*, July 31, 1975. Brown, Walsh, Rovet — eight pages. (33)

Falsification of time card — three-day suspension justified; grievance dismissed. *Re Rockwell International of Canada Limited and United Automobile Workers, Local 127; Kwik grievance*, September 15, 1975. Hinnegan — nine pages. (34)

Insubordination; refusal to complete work assigned — discipline justified; grievance dismissed. *Re Kitchener Beverages Limited and United Brewery, Flour, Cereal, Soft Drink and Distillery Workers of America, Local 173; Glassford grievance*, August 28, 1975. Majority: Brown, Smith — 11 pages; dissent: Beckwith — three pages. (35)

Negligence in performing work — two-day suspension justified; grievance dismissed. *Re International Nickel Company of Canada Limited and United Steelworkers of America; Kuleba grievance*, September 2, 1975. Majority: Hinnegan, Phelps — five pages; dissent: Gareau — two pages. (36)

Grievance Procedure

Failure to comply with initial grievance procedure beyond grievor's control — grievance arbitrable. *Re Dominion Glass Company Limited and Office and Professional Employees' International Union, Local 131; Forde grievance*, September 11, 1975. Majority: Ferguson, Bertram — eight pages; dissent: Simon — one page. (37)

Individual grievance; company reimbursing grievor before arbitration — declaration not appropriate; grievance dismissed. *Re American Can of Canada Limited and Sheet Metal Workers International Association, Local 487; Bresett grievance*, August 13, 1975. Majority: O'Shea, Morley — seven pages; dissent: McKellar. (38)*

Timeliness — time limits directory; grievance arbitrable. *Re William Neilson Limited and Canadian Food and Allied Workers; Curlink grievance*, August 21, 1975. Majority: Curtis, Healy — six pages; did not concur: Dawson. (39)

Union grievance — monetary relief available to an individual where union grievance brought. *Re Canadian Pacific Limited (Telecommunications Department) and Canadian Telecommunications Union* — see (5), *supra*. (40)

Waiver of mandatory time limits by conduct of parties — grievance allowed. *Re Corporation of the City of Vanier and Canadian Union of Public Employees, Local 954; group grievance*, August 20, 1975. Majority: Roach, Henry — 14 pages; dissent: Crête. (41)

Holiday Pay

Part-time employee — pay proportionately adjusted; grievances dismissed. *Re Collingwood General and Marine Hospital and Service Employees' Union, Local 204; Fry et al grievances*, September 8, 1975. Majority: Adell, Ivany — 11 pages; dissent: Wren — two pages. (42)

Qualifying days — because of illness on qualifying day, grievance allowed. *Re Outboard Marine Corporation of Canada Limited and United Steelworkers, Local 5009; Wood grievance*, September 15, 1975. Brown — ten pages. (43)

Interpretation

Extrinsic evidence — ambiguity justifying use of extrinsic evidence re past practice; grievance allowed. *Re Corporation of the City of Vanier and Canadian Union of Public Employees* — see (41), *supra*. (44)

Job Posting

No permanent vacancy or new job classification; no requirement to post job preferences — grievance dismissed. *Re Corporation of the Borough of Scarborough and Nurses' Association Scarborough Health Department; policy grievance*, August 26, 1975. Majority: Brown, Sanderson — seven pages; dissent: Walsh — three pages. (45)

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Board ordering that collective agreement be amended to include certain provisions. *Re Carleton Board of Education and Local Group comprising Members of Federation of Women Teachers' Associations of Ontario and Ontario Public School Men Teachers' Federation; policy grievance*, August 28, 1975. O'Shea, Lewis, Farrar — nine pages. (46)

Leave of Absence

OHIP premium payments — employee on prolonged leave of absence must pay own premiums; past practice followed; grievance dismissed. *Re Bendix Home Systems Limited and United Brotherhood of Carpenters, Local 3045; Fawcett grievance*, September 17, 1975. Brent — nine pages. (47)*

Management Rights

Assessment of female employee's ability to perform job — test to be used in skill, ability and efficiency of the reasonably proficient workman of same classification. *Re Aro Canada Limited and International Association of Machinists* — see (19), *supra*. (48)*

Overtime

Distribution — assignment within department taking precedence over job classifications; grievance dismissed. *Re Rockwell International of Canada Limited and Rockwell Employees' Association; Tetreault, Souigny grievances*, July 21, 1975. Stewart — seven pages. (49)

Distribution — employer having right to decide which occupations will be offered overtime; grievance dismissed. *Re Canadian Cannery Limited and International Association of Machinists, Local 863; Filman grievance*, August 25, 1975. Majority: Charney, Alder — nine pages; dissent: Tate — three pages. (50)

Remedy for improper assignment — grievor entitled to overtime pay; grievance allowed. *Re Canada Cement Lafarge Limited and United Cement, Lime and Gypsum Workers, Local 386; Sweeney grievance*, September 12, 1975. Majority: Hinnegan, Bekerman — 11 pages; dissent: Mathews — four pages. (51)

Part-time Employees

Holiday pay — proportionately adjusted; grievance dismissed. *Re Collingwood General and Marine Hospital and Service Employees' Union* — see (42), *supra*. (52)*

Pensions

Early retirement — supplementary payment provisions rendered inoperative by current Old Age Security legislation; company calculating benefits in accordance with agreement; grievance dismissed. *Re Monsanto Canada Limited and United Rubber, Cork, Linoleum and Plastic Workers of America, Local 292; policy grievance*, September 18, 1975. Majority: Hinnega, Healy — seven pages; dissent: Shea. (53)

Promotion

Neither applicant qualified for job — employer entitled to use tests to determine person with most aptitude for job; grievance dismissed. *Re Lake Ontario Steel Company Limited and United Steelworkers of America, Local 6571; Holmes grievance*, July 18, 1975. Majority: Hinnegan, McGowan — eight pages; dissent: Ross — five pages. (54)*

Recall

Recall rights — grievor recalled for first available position for which he was qualified; grievance dismissed. *Re International Nickel Company of Canada Limited and United Steelworkers of America; Tooley grievance*, July 10, 1975. Majority: Hinnegan, Stone — 12 pages; dissent: Arseneault — two pages. (55)

Seniority

Inventory work — seniority provisions of collective agreement do not apply; grievance dismissed. *Re Moloney Electric Company of Canada Limited and International Union of Electrical, Radio and Machine Workers, Local 536; McCaig et al grievances*, August 18, 1975. Majority: O'Shea, Healy — eight pages; dissent: Aslin — five pages. (56)*

Qualifications for temporary promotion — seniority not the determining factor when "requirements of operation" did not safely allow senior employee to be promoted. *Re Falconbridge Nickel Mines Limited and Sudbury Mine, Mill and Smelter Workers; Union, Local 598; Fader grievance*, August 22, 1975. Majority: Krever, Sanderson — 16 pages; dissent: LaChance — two pages. (57)

Qualifications where lay-off — grievors possessing requisite ability; grievance allowed. *Re Canteen of Canada Limited and Retail, Wholesale and Department Store Union, Local 414; Sheppard, Demoe grievances*, August 26, 1975. O'Shea, Spaxman, Nielsen — 12 pages. (58)

Qualifications where lay-off — trial periods showing that grievor not qualified; grievance dismissed. *Re Electrohome Limited and International Association of Electrical Workers, Local 2345; McNutt grievance*, September 15, 1975. Majority: Andrews, Noonan — eight pages; dissent: Weisbach — one page. (59)

Temporary promotion governed by seniority of permanent and not probationary employees — grievance dismissed. *Re Eaton Yale Limited and United Automobile Workers, Local 127; Bagnell grievance*, September 16, 1975. Rayner — five pages. (60)

Sick Pay

Commencement of benefits — sick benefits to commence from employee's anniversary date of employment; grievance allowed. *Re Great Atlantic and Pacific Company of Canada Limited and Canadian Food and Allied Workers, Locals 175, 633; Lezetc, Patterson grievances*, September 19, 1975. Majority: Brown, Dawson — seven pages; dissent: Dinsdale — three pages. (61)

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Bonus to non-strikers — violating term of collective agreement prohibiting discrimination because of lawful union activity; grievance allowed. *Re Kodak Canada Limited and International Chemical Workers' Union, Local 159; group grievance*, August 27, 1975. Betcherman — six pages. (62)*

Transfer

Nature of transfer — temporary transfer; grievance dismissed. *Re William Neilson Limited and Canadian Food and Allied Workers* — see (39), *supra*. (63)

Union Rights

Union representation — employees entitled to union representation when discussing contentious matters with company; grievance allowed. *Re Fleet Industries and International Association of Machinists, Lodge 171; union grievance*, September 2, 1975. Arthurs, Wren, Marchand — ten pages. (64)*

Union Security

Failure to remit union dues; dues held back as security for payment of welfare plan premiums during strike — company declared to be in technical violation of collective agreement in its failure initially to remit dues. *Re Toronto Hydro Electric System and Canadian Union of Public Employees, Local 1; union grievance*, September 29, 1975. Anderson — six pages. (65)

Vacations

Scheduling: vacations scheduled for lay-off period — violation of collective agreement; grievance allowed. *Re Ingersoll Machine and Tool Company Limited and United Steelworkers of America, Local 2918; group grievance*, September 5, 1975. Hinnegan, Ginty, Payette — ten pages; addendum: Payette. (66)*

Wages

Apprenticeship: grievor completed on-the-job training but failed theory course — company justified in not increasing wages until course passed; grievance dismissed. *Re International Nickel Company of Canada Limited and United Steelworkers of America, Local 6500; Grylls grievance*, July 15, 1975. Majority: Hinnegan, Stone — nine pages; dissent: McDonald. (67)

Seniority entitling grievor to higher pay — grievance allowed. *Re Globe Envelopes Products Limited and United Automobile Workers; Day grievance*, September 2, 1975. Palmer — six pages. (68)

Work Assignment

Assignment of work belonging to another classification — grievance allowed. *Re CFTO-TV Limited and National Association of Broadcast Employees and Technicians; policy grievance*, September 24, 1975. O'Shea — 13 pages. (69)

Assignment of work from two different departments to employee — work load not sufficient for full-time employee; grievance dismissed. *Re Dominion Glass Company Limited and Office and Professional Employees' International Union* — see (37), *supra*. (70)

Experimental work — assignment covered in collective agreement; company's selection not discriminatory; grievance dismissed. *Re Standard Tube Canada Limited and United Automobile Workers, Local 636; policy grievance*, September 18, 1975. Fox — seven pages. (71)

Other bargaining unit assigned work and lower rate paid — position substantially similar to former duties; employer violating collective agreement. *Re Corporation of the Borough of Scarborough and Scarborough Civic Employees' Union, Local 368; union grievance*, September 5, 1975. Majority: Adams, Wren — 19 pages; dissent: Sanderson — four pages; addendum: Adams — three pages. (72)*

Supervisors using employer's car; chauffeur grieving — not on assignment of bargaining unit work; grievance dismissed. *Re Libby, McNeil & Libby of Canada Limited and United Automobile Workers, Local 127; Thompson grievance*, September 17, 1975. Palmer — six pages. (73)

The awards may be seen at the offices of the Commission, 400 University Avenue 14th floor, Toronto. Copies of awards may be obtained for a fee of 50 cents per page. Orders will be filled on receipt of an application and a cheque or money order payable to the Treasurer of Ontario for the applicable amount, which should be forwarded to: Cashier's Office, Ministry of Labour, 400 University Avenue, Toronto, Ontario M7A 1V6

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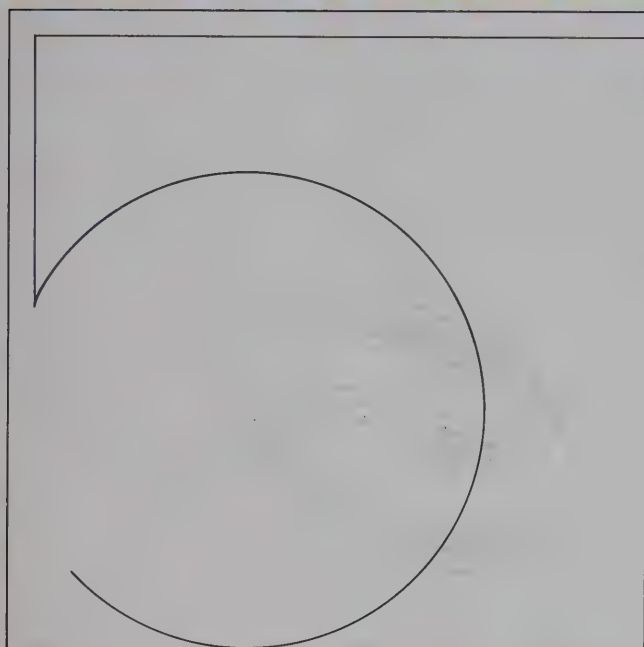
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Arbitrability

Settlement of grievance — ratification by union membership not required; settlement binding. *Re Continental Can Company of Canada Limited and Graphic Arts International Union, Local 12L; union grievance*, September 30, 1975.

Weatherill, Tate, Pyle — nine pages. (1)*

Employment relationship terminated prior to grievance — grievance not arbitrable. *Re Honeywell Limited and United Automobile Workers, Local 80, H. Leonard, J. Leonard grievance*, September 30, 1975. Majority: Hinnegan, White — five pages; dissent: Porter. (2)*

No reference to health plan in body of agreement — grievance re OHIP premiums not arbitrable. *Re Falconbridge Copper Limited and Sudbury Mine, Mill and Smelter Workers Union; union grievances*, October 20, 1975. Brown — 13 pages. (3)

Settlement alleged — union president signing reply to grievance not sufficient to bind union under collective agreement; grievance arbitrable. *Re Junior Footwear Limited and Boot and Shoe Workers Union; policy grievance*, September 26, 1975. Brown — eight pages. (4)

Classification

Duties of higher classification alleged — job correctly reclassified by company; grievance dismissed. *Re Northern Electric Company Limited and United Automobile Workers, Local 1535; Reid grievance*, October 14, 1975. Brown — ten pages. (5)

Merger of two classifications — new job created; company must negotiate wages; grievance allowed. *Re Allen Industries Canada Limited and United Automobile Workers; union grievance*, September 30, 1975. O'Connor — 12 pages. (6)

Collective Agreement

Retroactivity — shift premiums to apply from effective date of agreement and not as of date of execution of agreement; grievance upheld. *Re Falconbridge Copper Limited and Sudbury Mine, Mill and Smelter Workers* — see (3), *supra*. (7)

Contracting Out

Subcontracting of work to outside agency — company in violation of agreement; grievance upheld. *Re Air Canada and Canadian Air Line Employees' Association; union grievance*, October 27, 1975. O'Shea — 27 pages. (8)*

Work contracted out for economic reasons — no express restriction on right to contract out; grievance dismissed. *Re Union Carbide Canada Limited and Oil, Chemical and Atomic Workers International Union, Local 9-593; policy grievance*, October 2, 1975. Hinnegan, Porter, Kelly — nine pages. (9)

Damages

Mitigation; employer offered extra work to remedy a prior shortage of hours — union unreasonably rejected this offer; grievance dismissed for those affected by offer. *Re P. L. Robertson Manufacturing, Division of Procor Limited and United Steelworkers of America, Local 4970; union grievance*, October 6, 1975. Shime, Bates, Pudge — six pages. (11)

Discharge

Absence without clear justification; record of employee considerably improved — reinstatement with full compensation. *Re John Noble Home and Service Employees Union, Local 207; Babiak grievance*, October 17, 1975. Dunn, Flood, Wren — two pages. (12)

Absence without leave; failure to report — mitigating circumstances; reinstated without compensation. *Re McGraw-Edison of Canada Limited, Simplicity and Speed Queen Division and International Union of Electrical, Radio and Machine Workers, Local 595; Paulitzki grievance*, September 9, 1975. Majority: Hinnegan, Aslin — 12 pages; dissent: Cook. (13)

Absenteeism — discharge justified because of grievor's past record; grievance dismissed. *Re Outboard Marine Corporation of Canada Limited and United Steelworkers of America, Local 5009; Smith grievance*, October 10, 1975. Hinnegan — five pages. (14)

Absenteeism — evidence failed to establish *bona fide* illness; discharge justified. *Re Lake Ontario Steel Company Limited and United Steelworkers, Local 6571; Peebles grievance*, September 10, 1975. O'Shea, Wood, Farrar — 13 pages. (15)

Culminating incident: total neglect of responsibilities — discharge justified. *Re Greater Welland Ambulance Service and Civil Service Association of Ontario (Inc.); MacInnis grievance*, October 24, 1975. Majority: Brown, Robinson — 12 pages; dissent: Morgan. (16)

Consumption of alcohol on job — discharge justified in case of employee with poor work record; suspension substituted for discharge in cases of employees with good work records; grievance allowed in part. *Re Alcan Canada Products, Bracebridge Works and United Steelworkers, Local 7949; Matchett et al grievances*, Majority: O'Shea, Mathews — 13 pages; dissent: Gareau — two pages. (17)

Illegal work stoppage and illegal wildcat strike — some grievances dismissed, others reinstated with or without suspension and with or without back pay. *Re Steel Company of Canada Limited and United Steelworkers of America, Local 1005; McCrea et al grievances*, October 15, 1975. Brandt, Sanderson, Sharp (except re Gunby grievance) — 69 pages. (19)

Failure to meet job responsibilities: no culminating incident — discharge unjustified; reinstatement with compensation awarded. *Re Northern Electric Company Limited and United Automobile Workers, Local 27; Hill grievance*, October 1, 1975. Weatherill — six pages. (18)

Improper conduct toward fellow employees — discharge justified. *Re Heritage Nursing Home and Service Employees Union, Local 204; Aiken grievance*, September 17, 1975. Majority: Baum, Stevenson — 15 pages; dissent: Hamilton — one page. (20)

Insubordination: abusive language to supervisor — discharge unjustified; suspension without compensation to date of publication of award substituted. *Re Findlay Foundry Limited and International Moulders Union; Ford grievance*, October 2, 1975. Majority: Gorsky, Wohl — eight pages; dissent: Langley — eight pages. (21)

Insubordination: refusal to accept transfer to another position — grievance dismissed. *Re FMC of Canada Limited and International Molders and Allied Workers Union, Local 445; Klein grievance*, September 29, 1975. Majority: Brown, Healy — 11 pages; did not concur — Wohl. (22)

Insubordination: refusals to follow instructions — discharge justified. *Re AP Parts of Canada Limited and United Automobile Workers, Local 252; Moutoulis grievance*, October 22, 1975. Majority: Brown, Sanderson — 20 pages; dissent: Dias — four pages. (23)

Insubordination; refusal to perform work — grievor fails to prove alleged discrimination by foreman; grievance dismissed. *Re Inglis Limited and United Steelworkers, Local 2900; Huntley grievance*, October 3, 1975. O'Shea — 22 pages. (24)

Misconduct: sleeping in concealed area during night shift — grievor deliberately attempting to mislead board; discharge justified. *Re National Grocers Company Limited and Retail, Wholesale and Department Store Union, Local 414; Howell grievance*, October 15, 1975. Majority: O'Shea, Hersey — 11 pages; dissent: Spaxman — three pages. (25)

Onus on employer to justify discharge — evidence insufficient; grievance allowed. *Re City of Timmins and Canadian Union of Public Employees, Local 1140; Gallant grievance*, October 7, 1975. Dunn, Noble, DeGurse — three pages. (26)

Possession of alcoholic beverages on plant premises — discharge justified. *Re Canadian Vinyl Fabrics Stauffer Chemical Company of Canada Limited and United Steelworkers of America, Local 13286; McPhee grievance*, September 29, 1975. Majority: O'Shea, Cook — eight pages; dissent: Grasso — one page. (27)

Provoking fight on company property — suspension for approximately four months substituted. *Re Great Lakes Forgings Limited and United Automobile Workers; Lehoux grievance*, October 9, 1975. O'Connor — ten pages. (28)

Quit alleged; actions not consistent with quitting — grievor reinstated without loss of seniority and without compensation. *Re Hanmer Bus Lines Incorporated and Canadian Union of Public Employees, Local 895; Rannelli grievance*, September 24, 1975. Lunney — 14 pages, McVey (except as to compensation) — 11 pages; dissent: Warren — three pages. (29)

Discipline

Careless workmanship — suspension justified; grievance dismissed. *Re R. Laidlaw Lumber Company Limited and International Woodworkers of America, Local 2-700; Perna grievance*, October 11, 1975. Majority: Weatherill, Middleton — six pages; dissent: Bedard. (30)*

Insubordination — obscene and abusive language directed at foreman and refusal to go to office; just cause for discipline. *Re Canada Packers Limited and Canadian Food and Allied Workers; Lucas grievance*, October 11, 1975. Majority: Weatherill, Williamson — seven pages; did not concur: Dawson. (31)

Insubordination; profanity directed at lead hand — not constituting insubordination; grievance allowed. *Re Outboard Marine Corporation of Canada Limited and United Steelworkers of America, Local 5009; Thompson grievance*, October 10, 1975. Hinnegan — five pages. (32)

Insubordination: refusal to perform duties — two-week suspension justified. *Re Canadian Broadcasting Corporation and Association of Radio and Television Employees of Canada; Levesque grievance*, September 29, 1975. Majority: Brown, Caron — 15 pages; dissent: Bouchard — one page. (33)

Insubordination: refusal to report to manager's office — warning substituted for suspension and compensation ordered. *Re VS Services Limited and Canadian Union of General Employees; Rudolphe grievance*, October 17, 1975. Majority: Shime, O'Brian — six pages; dissent: Pyle — two pages. (34)

Unsatisfactory work performance alleged — mitigating circumstances; suspension removed from grievor's record. *Re Canron Limited and United Steelworkers of America, Local 4213; Thompson grievance*, October 1, 1975. Brown — 14 pages. (35)

Evidence

Cross-examination — not limited to subject matter raised in examination-in-chief. *Re R. Laidlaw Lumber Company Limited and International Woodworkers* — see (30), *supra*. (36)*

Privilege — section nine of *The General Welfare Assistance Act* not creating an evidential privilege allowing employer to refuse to identify welfare recipients. *Re Regional Municipality of Ottawa-Carleton and Ottawa-Carleton Public Employees Union, Local 503 CUPE; Parsons grievance*, October 10, 1975. Interim award: Beatty, Reid, Deline — 21 pages. (37)*

Grievance Procedure

Extension of time limits — amendments to *The Labour Relations Act* not retroactive; grievance dismissed. *Re Globe Spring and Cushion Company Limited and United Steelworkers of America, Local 7291; policy grievance*, October 4, 1975. Majority: Brown, Begineul — 13 pages; dissent: Joyce. (38)*

Timeliness: employer failing to comply with time limits — time limit directory. *Re Union Carbide Canada Limited and Oil, Chemical and Atomic Workers International Union* — see (9), *supra*. (39)

Timeliness: union's notice to arbitrate timely — grievance as to wage rates allowed. *Re Falconbridge Copper Limited and Sudbury Mine, Mill and Smelter Workers* — see (3), (7), *supra*. (40)

Holidays

Holiday worked — employer not required to provide day off in lieu of holiday. *Re General Bakeries Limited and Bakery and Confectionery Workers International Union, Local 264; policy grievance*, September 30, 1975. Majority: Brown, McGowan — five pages; did not concur: Reid. (41)

Holiday Pay

Qualifying days: grievor working only a partial shift scheduled for day after holiday — not entitled to holiday pay; grievance dismissed. *Re American Standard and United Steelworkers of America, Local 3589; Wesley grievance*, October 11, 1975. Majority: Weatherill, Healy — seven pages; dissent: Berry — two pages. (42)

Interpretation

Ambiguity — no ambiguity on face of agreement; extrinsic evidence not admissible. *Re CFTO-TV Limited and National Association of Broadcast Employees and Technicians; Edwards grievance*, October 22, 1975. Interim award: Brown — eight pages. (43)

Lay-off

Lay-off following change in classification — consequences not explained fully to grievor when change made; grievance allowed; reinstatement without compensation. *Re Municipality of Metropolitan Toronto and Canadian Union of Public Employees, Local 43; Sanfelice grievance*, August 6, 1975. Majority: Ord, Tate — ten pages; dissent: Perron — four pages. (44)

Temporary lay-off — lay-off improper; grievance allowed. *Re McGraw-Edison of Canada Limited and International Union of Electrical, Radio and Machine Workers, Local 595; policy grievance*, October 17, 1975. Majority: Brandt, Aslin — ten pages; dissent: Sanderson. (45)

Management Rights

Promulgation of rules where collective agreement already containing rules — company entitled to establish additional rules unilaterally as long as no conflict with agreed-to rules; grievance dismissed. *Re Ex-Cell-O Corporation of Canada Limited and International Molders Union, Local 49; policy grievance*, September 26, 1975. Majority: Simmons, Farrar — 12 pages; did not concur: Wohl. (46)*

Overtime

Existence of overtime; work performed on regular shift — company has task of determining when overtime to be worked; grievance dismissed. *Re Morbern Industries Limited and International Leather Goods, Plastic and Novelty Workers Union; union grievance*, October 10, 1975. Curtis — six pages. (47)

Payment of overtime bonus — grievor called back to work within 24 hours of his original shift; bonus payable. *Re Outboard Marine Corporation of Canada Limited and United Steelworkers of America, Local 5009; Coupland grievance*, October 30, 1975. O'Shea — eight pages. (48)

Pyramiding — grievor entitled to shift differential and overtime. *Re Texaco Canada Limited and Oil, Chemical and Atomic Workers International Union, Local 9-599; Boyd grievance*, October 20, 1975. Majority: Shime, Edwards — five pages; dissent: Sanderson — one page. (49)*

Temporary assignment of employee in another job classification not in breach of overtime provisions — grievance dismissed. *Re Domtar Chemical Limited and Oil, Chemical and Atomic Workers, Local 9-683; Mallaly grievance*, August 29, 1975. Majority: Brown, Byers — ten pages; did not concur: More. (50)

Probationary Employee

Calculation of probationary period — cannot accumulate periods to obtain seniority status; grievance dismissed. *Re Northern Electric Company Limited and United Automobile Workers, Local 1837; union grievance*, October 9, 1975. Simmons — seven pages. (51)

Discharge — no onus on employer to justify discharge unless discrimination alleged on basis of union affiliation, nationality, etc.; grievance dismissed. *Re Board of Education for the City of Windsor and Ontario Secondary School Teachers' Federation; Williams grievance*, October 1, 1975. Majority: Kruger, Bartlet — six pages; dissent: Dimmick — eight pages. (52)*

Safety

Refusal to work because of inadequate heating — grievors only entitled to reporting pay; grievance allowed in part. *Re Great West Steel Industries Limited and United Steelworkers of America, Local 4515; union grievance*, October 10, 1975. Shime — 11 pages. (53)*

Scheduling of Work

Days-off — scheduling proper; grievance dismissed. *Re Silverwood Dairies, Division of Silverwood Industries Limited and Retail, Wholesale and Department Store Union, Local 440; Skillen grievance*, October 6, 1975. Shime, Sparling, Spaxman — four pages. (54)

Night shift employees not entitled to one Saturday per month off under the collective agreement — grievance dismissed. *Re Steinberg's Limited and Canadian Food and Allied Workers, Local 175; group grievance*, October 8, 1975. O'Shea — seven pages. (55)

Seniority

Assignment of work to junior grievor on plant-wide basis — collective agreement providing for departmental seniority; grievor junior in department; grievance dismissed. *Re Maislin Transport Limited and Teamsters, Local 141; Patterson grievance*, September 30, 1975. Ferguson, Fosbery, Kobryn — nine pages. (56)

Qualifications for promotion — employer's conclusion that grievor less qualified reasonable; grievance dismissed. *Re Corporation of Borough of York and Canadian Union of Public Employees; Roach grievance*, September 30, 1957. Ferguson, Wren, Paulin — seven pages. (57)

Qualifications for promotion — grievor equally qualified; grievor awarded promotion and full compensation. *Re Corporation of Borough of York and Canadian Union of Public Employees; Ryans grievance*, September 30, 1975. Ferguson, Wren, Paulin (subject to addendum) — five pages. (58)

Qualifications for promotion — grievor less qualified; grievance dismissed. *Re Corporation of City of Kingston and Canadian Union of Public Employees, Local 141; Werden grievance*, October 10, 1975. Curtis — nine pages. (59)

Qualifications for promotion — grievor more qualified; matter referred back to employer for reconsideration. *Re Norfolk Hospital Association and London and District Building Service Workers' Union, Local 220; Smith grievance*, October 24, 1975. O'Connor, Farrar, Walsh — 11 pages. (60)

Qualifications for promotion — job not demanding major skills; grievance allowed. *Re McMaster University and Service Employees International Union, Local 532; Mrkic grievance*, October 14, 1975. Majority: Shime, Wren — nine pages; dissent: Wright. (61)*

Qualifications where lay-off — senior employees qualified to bump junior employees. (1) *Solomon, Campbell, Pitt, Sutherland grievances* upheld. (2) *Chramow grievance* dismissed for lack of evidence. *Re ITT Cannon Electric Canada and United Automobile Workers; Solomon et al grievances*, October 28, 1975. Majority: Weatherill, Blackburn — ten pages; dissent: Gilmore — four pages. (62)

Sick Pay

Entitlement — grievor unable to perform any work during period in question although long-term prognosis good; grievance allowed. *Re International Nickel Company of Canada Limited and United Steelworkers of America, Local 6500; Smith grievance*, October 15, 1975. Majority: Gorsky, Keck — 14 pages; dissent: Filion — three pages. (63)

Withholding of payment for initial two days of fourth sickness allowed under collective agreement — past practice of the company in using different dates to calculate the number of illnesses in one year irrelevant; grievance dismissed. *Re St. Mary's General Hospital and Ontario Nurses' Association, Nyiri grievance*, September 17, 1975. Majority: O'Connor, Cook — 11 pages; dissent: Walsh — one page. (64)

Transfer

Transfer alleged — reassignment within same job classification not a transfer; grievance dismissed. *Re University of Toronto and Service Employees International Union, Local 205; Schembri grievance*, September 30, 1975. Majority: Ferguson, Cook — seven pages; dissent: Simon. (65)

Vacation Pay

Part-time employee — grievor a part-time employee at relevant date, therefore entitled only to part-time employee's vacation pay; grievance dismissed. *Re Steinberg's Limited and Canadian Food and Allied Workers, Local 175; union grievance*, October 8, 1975. O'Shea — ten pages. (66)

Wages

Cost of living bonus — agreement not ambiguous; employer calculating bonus according to agreement. *Re Board of Trustees of Durham Region Roman Catholic Separate School Board and Ontario English Catholic Teachers' Association; union grievance*, September 24, 1975. Ferguson, B. H. Stewart, Simon — four pages. (67)

Piece-work — piece workers entitled to greater of piece-work rate or provincial minimum wage and not the hourly employee rate; grievance dismissed. *Re Junior Footwear Limited and Boot and Shoe Workers' Union* — see (4), *supra*. (68)

Rate of pay — all increases to be in addition to provincial minimum wage — minimum wage rate and not as fixed at date of agreement; grievance upheld. *Re Junior Footwear Limited and Boot and Shoe Workers Union, Local 853; union grievance*, October 28, 1975. Brunner — 13 pages. (69)

Welfare Plans

Unilateral increase in employee portion of insurance premium — union failing to establish company in violation of agreement; grievance dismissed. *Re C. R. Snelgrove Company Limited and United Electrical, Radio and Machine Workers of America, Local 514; union grievance*, October 16, 1975. Majority: Beatty, McKeown — 12 pages; dissent: Tate — four pages. (70)

Work Assignment

Assignment of work to different job classification resulting in lay-offs — company acting for *bona fide* business reasons; no violation of agreement. *Re Eaton Yale Limited, Forestry Equipment Division and International Molders and Allied Workers' Union; union grievance*, October 20, 1975. Shime — eight pages. (71)

Bargaining unit work assigned to supervisor — grievor was "available"; grievance allowed. *Re Imperial Tobacco Products (Ontario) Limited and Tobacco Workers International Union, Local 323; Aitchison grievance*, October 16, 1975. Beatty, Sanderson, Kelley — 11 pages; addendum: Sanderson — one page. (72)

Bargaining unit work alleged to be performed by sub-contractor — allegation not established; grievance dismissed. *Re Northern Electric Company Limited and United Automobile Workers, Local 1535; Ferraro grievance*, October 15, 1975. Brown — 11 pages. (73)

Bargaining unit work performed by persons not in bargaining unit — grievance allowed. *Re Air Canada and Canadian Air Line Employees' Association; union grievance*, October 6, 1975. Brown — 12 pages. (74)

Bargaining unit work performed by supervisor — grievance allowed. *Re Air Canada and Canadian Air Line Employees' Association; policy grievance*, October 14, 1975. Hinnegan — four pages. (75)

Transfer of work to non-bargaining unit employees: such employees not prevented by the agreement from performing work — employer acting for *bona fide* business reasons; grievance dismissed. *Re Eaton Yale Limited, Forestry Equipment Division and International Molders and Allied Workers' Union; policy grievance*, October 20, 1975. Shime — six pages. (76)

The awards may be seen at the offices of the Commission, 400 University Avenue 14th floor, Toronto. Copies of awards may be obtained for a fee of 50 cents per page. Orders will be filled on receipt of an application and a cheque or money order payable to the Treasurer of Ontario for the applicable amount, which should be forwarded to: Cashier's Office, Ministry of Labour, 400 University Avenue, Toronto, Ontario M7A 1V6

Filing Awards

The attention of chairmen of boards of arbitration and sole arbitrators is drawn to the provision of Section 6(2) of the Regulation, which reads: 6.—(2) Every arbitrator shall, within ten days of issuing an award, file a copy thereof with the Commission. This provision would apply to all arbitrators approved under The Ontario Labour-Management Arbitration Commission Act and regardless of whether they were appointed as chairmen or sole arbitrators pursuant to the Act, by the parties or by the Minister.

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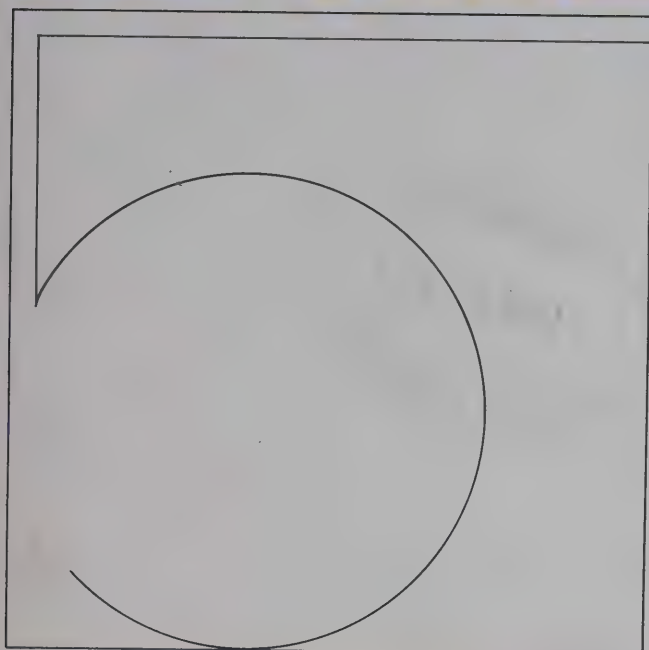
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The Ontario Labour-Management
Arbitration Commission

His Honour Judge Walter Little, Chairman
Mary Calarco, Registrar



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T.E. Armstrong, QC, Deputy Minister

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Arbitrators

The name of Professor Horace Krever, Q.C., which appeared in the list of approved arbitrators published in the Monthly Bulletin Volume 5, Number 8 for November, 1975, is deleted at his request, on the occasion of his elevation to the Bench of the Supreme Court of Ontario. Hearty congratulations are offered to Honourable Mr. Justice Krever on his appointment.

Editorial Correction

The list of arbitrators in the November Monthly Bulletin was in error in that the initials of Professor McCaughey were incorrectly shown as "J.E."; the correct listing is: Professor W.E. McCaughey. Details of his address and telephone numbers are correct as shown.

Awards

The following awards were filed with the Commission during the months of November and December, 1975, under Section 6(2) of Ontario Regulation 635, R.R.O. 1970.

The summary was prepared at the Faculty of Law, Queen's University, under the supervision of C.G. Simmons, B.A., B.C.L., LL.D., and D.D. Carter, B.A., LL.B., B.C.L.

*Indicates award to be reported in full or in part in *Labour Arbitration Cases*.

Arbitrability

Partial settlement of grievance alleged — withdrawal of two-day suspension only on offer of settlement; suspension issue arbitrable. *Re Dominion Stores Limited and United Steelworkers of America, Local 14045; Pekor grievance*, December 5, 1975. Johnston — 12 pages. (1)

Payment of rates above those specified by collective agreement — refusal of employer to supply information concerning these rates not arbitrable. *Re A.C. Wickman Limited and United Electrical, Radio and Machine Workers of America, Local 51; policy grievance*, September 16, 1975. Majority: Roberts, Healy — five pages; dissent: Bullock — two pages. (2)

Status of by-law enforcement officers — not a matter for Ontario Police Commission; grievance arbitrable. *Re Corporation of the City of Hamilton and Canadian Union of Public Employees, Local 167; union grievance*, October 8, 1975. Interim award: Andrews — 12 pages. (3)

Bargaining Unit

"Storekeeper" — term including all stores employees; grievance allowed. *Re Governing Council of the University of Toronto and Service Employees Union, Local 204; policy grievance*, November 5, 1975. Majority: Adell, Wren — 33 pages; dissent: Cook — 12 pages. (4)*

Board of Arbitration

Extent of arbitral review in promotion cases — board deciding whether applicants qualified and relative qualifications of each; grievance allowed. *Re St. Catharines General Hospital and Service Employees' Union, Local 204; Bell et al grievances*, November 14, 1975. Majority: Adams, Simon — 45 pages; dissent: Morphy — two pages. (5)*

Classification

Lay-off under one collective agreement and re-hiring under another not equivalent to re-classification — grievance dismissed. *Re Imperial Leaf Tobacco Company Limited and International Chemical Workers' Union, Local 843; Hartoon grievance*, November 21, 1975. Majority: Weatherill, Winkler — eight pages; did not concur: Wohl. (6)

New classification alleged: permanent assignment of job duties to different classification — no substantial qualitative change in classification; grievances dismissed. *Re Municipality of Metropolitan Toronto and Canadian Union of Public Employees, Local 43; Reid grievances*, November 24, 1975. Majority: Adams, Perron — 29 pages; dissent: Tate. (7)

Contracting Out

No express restriction in collective agreement — employer acting in good faith; grievance dismissed. *Re Ex-Cello-O Corporation of Canada Limited and International Molders and Allied Workers' Union, Local 49; policy grievance*, November 7, 1975. Majority: Weatherill, Farrar — seven pages; dissent: Wohl — 5 pages. (8)

Damages

Calculation of damages where improper work assignment — union awarded total sum paid to non-union members; grievance allowed. *Re McKenna Brothers Limited and Plumbers' Union, Local 527; union grievance*, November 12, 1975. Final majority award: Shime, Strickland — ten pages; dissent: Hastings — three pages. (9)* See also Vol. 4,1(10)

Discharge

Absenteeism — grievor participating in rehabilitation programme for alcoholism; grievance allowed. *Re Air Canada and International Association of Machinists, Lodge 148; Goring grievance*, November 14, 1975. O'Shea — 15 pages. (10)

Consumption of alcohol on job: (1) *Farough grievance* — grievor reinstated; (2) *Hunt, Pitts, Simpson grievances* — discharge justified. *Re Auto Haulaway Releasing Services Limited and Teamsters, Local 880, Farough et al grievances*, October 21, 1975. Majority: O'Shea, McClelland — 15 pages; dissent: Kobryn — three pages. (11)

Absenteeism because of illness: evidence disclosing probability of future unreasonable rate of absenteeism; discharge justified. *Re Canada Forgings Limited and United Automobile Workers, Local 275; Gigor grievance*, November 14, 1975. Hinnegan — seven pages. (12)

Absenteeism; culminating incident — grievance dismissed. *Re Lake Ontario Steel Company Limited and United Steelworkers, Local 6571; Thornton grievance*, November 11, 1975. Majority: Abbott, McGowan — 12 pages; dissent: Ross. (13)

Absenteeism: legitimate reasons — evidence disclosing probability of future unreasonable rate of absenteeism; discharge justified. *Re Canada Forgings Limited and United Automobile Workers, Local 275; Fournier grievance*, November 14, 1975. Hinnegan — six pages. (14)

Consumption of alcoholic beverages during course of employment — company not establishing "good cause" for discipline in accordance with agreement; discharge unjustified. *Re Frito-Lay Canada Limited and Milk and Bread Drivers, Dairy Employees, Caterers and Allied Employees, Local 647; McMurren grievance*, November 24, 1975. Majority: Beatty, K.W. Brown — 26 pages; dissent: Smith — one page. (15)

Culminating incident: absence from work without permission — penalty too severe: six-month suspension substituted. *Re Patchogue Plymouth — Hawkesbury Mills, a division of Amoco Canada Petroleum Company Limited and International Woodworkers of America; Cusson grievance*, October 20, 1975. Majority: Fraser, Paré — 17 pages; dissent: McKeown — two pages. (16)

Inability to work at satisfactory pace — dismissal justified; grievance dismissed. *Re Stewart-Warner Corporation of Canada, Limited and United Automobile Workers, Local 1538; Willis grievance*, November 27, 1975. O'Shea — 11 pages. (17)

Insubordination; refusal to comply with order — safety issue not *bona fide*; grievance dismissed. *Re Patchogue Plymouth — Hawkesbury Mills, a division of Amoco Canada Petroleum Company Limited and International Woodworkers of America; Bertrand grievance*, December 1, 1975. O'Shea — 12 pages. (18)

Unsatisfactory attitude and failure to be available for work; discharge justified. *Re A. Cope and Sons Limited and Teamsters, Local 879; Marshe grievance*, November 27, 1975. Majority: Brown, McKillop — 12 pages; dissent: A. Davidson — two pages. (19)

Culminating incident: collision while driving company truck — 15-day suspension substituted. *Re Gibsco Transport Limited and Teamsters, Local 879; Rafka grievance*, October 20, 1975. Hinnegan, Hurd, Earle — eight pages. (20)

Insubordination: refusal to follow instructions — culminating incident; grievance dismissed. *Re National Grocers Company Limited and Retail, Wholesale and Department Store Union, Locals 427, 582, 579, 915; Gauthier grievance*, September 30, 1975. Majority: Godin, Gray — 12 pages; did not concur: Peterson. (21)

Discipline

Culminating incident; absence without leave and lateness — reassignment of duties and written reprimand appropriate. *Re Dominion Stores Limited and United Steelworkers of America* — see (1), *supra*. (22)

Insubordination — refusal to work full eight and one-half hour shift; three-day suspension upheld. *Re Ingersoll Cheese Company, a Division, Nestle (Canada) Limited and Amalgamated Meat Cutters and Butcher Workmen of North America, Local 458; Messenger grievance*, November 12, 1975. Majority: O'Shea, Houck — 11 pages; dissent: Walsh — two pages. (23)*

Insubordination — suspension justified; grievance dismissed. *Re Houdaille Machine Tools of Canada and International Association of Machinists, Lodge 2243, District 717; Williamson grievance*, September 17, 1975. Majority: Gorsky, Gilmore — 12 pages; dissent: Wren. (24)

Insubordination: refusal to comply with personal appearance regulations concerning hair, beards, moustaches — standard unreasonable; grievances allowed. *Re J.M. Schneider Limited Meat Packers and Schneider Employees' Association; policy and group grievances*, November 5, 1975. Brown, Gray, Koskie — 21 pages. (25)*

Insubordination; shutting machine down early and swearing at management — three-day suspension "unjust and unreasonable"; written warning substituted for suspension. *Re Essex International of Canada Limited and United Steelworkers of America, Local 7030; Messenger grievance*, November 3, 1975. Majority: Brent, Ginty — seven pages; dissent: Mazzerole. (26)

Estoppel

Employer's past practice giving rise to reliance by employee — estoppel applicable; grievance upheld. *Re Frito-Lay Canada Limited and Milk and Bread Drivers, et al* — see (15), *supra*. (27)

Filing of grievance beyond time limits; secret hiring by employer — employer estopped from pleading non-arbitrability. *Re Sault Ste. Marie Board of Education and Canadian Union of Public Employees, Local 16; policy grievance*, September 30, 1975. Godin, Kozak, Virene — seven pages. (28)

Previous withdrawal or abandonment of grievance — union now estopped from bringing similar grievance at later date. *Re Governing Council of the University of Toronto and Service Employees Union* — see (4), *supra*. (29)*

Reliance on union's acquiescence to terms of insurance policy — estoppel applicable; grievance dismissed. *Re Ex-Cell-O Corporation of Canada, Limited and International Molders and Allied Workers Union, Local 49; policy grievance*, September 15, 1975. Majority: Hinnegan, Farrar — 15 pages; did not concur: Wohl. (30)

Evidence

Production of documents — union counsel entitled to production of medical reports during hearing; production ordered. *Re General Spring Products Limited and United Automobile Workers, Local 1524; Bilton grievance*, December 5, 1975. Weatherill — 17 pages. (31)* Only this part of the award will be reported in *Labour Arbitration Cases*.

Grievance Procedure

(1) Continuing grievance; grievance relating to non-payment of welfare premiums — a continuing grievance; (2) waiver of time limits — company waiving directory time limits by failure to object prior to hearing; grievance arbitrable. *Re Mutual Electric Company Limited and International Brotherhood of Electrical Workers, Local 1687; union grievance*, October 24, 1975. Ord — 13 pages. (32)

Extension of time limits under section 37(5a) of *The Labour Relations Act* — provision retrospective in application; employer not substantially prejudiced by intention; grievance arbitrable. *Re Plasticap Limited and United Electrical, Radio and Machine Workers of America, Local 544; Harrington et al grievance*, October 22, 1975. Majority: Simmons, Thornley — 20 pages; dissent: Drmaj — five pages. (33)*

Particulars: failure of union to raise particular legal argument during grievance procedure — grievance a general complaint; issue arbitrable. *Re Municipality of Metropolitan Toronto and Canadian Union of Public Employees* — see (7), *supra*. (34)*

Job Posting

Working foreman job created — obligation requiring job posting; grievance allowed. *Re Sault Ste. Marie Board of Education and Canadian Union of Public Employees* — see (28), *supra*. (35)

Job Vacancy

Existence of temporary vacancy — job duties permanently assigned to different classification; no vacancy existing. *Re Municipality of Metropolitan Toronto and Canadian Union of Public Employees* — see (7), (34), *supra*. (36)*

Existence of vacancy — process for filling complied with; grievance dismissed. *Re Covertite (Ontario) Limited and Sheet Metal Workers' International Union, Local 269; Harper grievance*, November 14, 1975. Simmons, Quaife, Warmington — six pages. (37)

Existence of vacancy — qualifications of grievor inadequate; grievance dismissed. *Re Labatt's Limited and International Brewery Workers Union, Local 304; Scott-Parker grievance*, November 20, 1975. Weatherill — seven pages. (38)

Laches

Detriment — position of individual employee relevant. *Re Governing Council of the University of Toronto and Service Employees Union* — see (4), (29), *supra*. (39)*

Lay-off

Assignment of managerial employees to bargaining unit jobs resulting in lay-offs or continuing lay-offs — not a violation of collective agreement if seniority respected; grievance dismissed. *Re Northern Electric Company Limited and United Automobile Workers, Local 27; policy grievance 16*, November 7, 1975. Weatherill — ten pages. (40)*

Cancellation of shift on New Year's eve — lay-off within definition of collective agreement; grievance allowed. *Re Plasticap Limited and United Electrical, Radio and Machine Workers of America* — see (33), *supra*. (41)*

Probationary employee — lay-off provision of collective agreement not applying; grievance dismissed. *Re Massey-Ferguson Industries Limited and United Automobile Workers, Local 439; Ventura grievance*, October 22, 1975. Gorsky — eight pages. (42)

Overtime

Consent — implied consent of grievor to work an eight and one-half hour shift; claim for overtime pay dismissed. *Re Ingersoll Cheese Company and Amalgamated Meat Cutters* — see (23), *supra*. (43)*

Distribution — special factors allowing uneven distribution; grievance dismissed. *Re International Nickel Company of Canada Limited and United Steelworkers of America; Charron grievance*, October 9, 1975. Majority: Gorsky, Filion — eight pages; dissent: McVey. (44)

Distribution — improper distribution — substitutional overtime offered and declined by grievor; no entitlement to damages for lost opportunity. *Re Atlas Steels Company and Canadian Steelworkers Union, Atlas Division; Holmes grievance*, November 14, 1975. Majority: Hinnegan, Stone — eight pages; dissent: Simpson — six pages. (45)

Existence of overtime — special work assignment not a "normal circumstance" requiring overtime; grievance dismissed. *Re Dominion Stores Limited and United Steelworkers of America, Local 14045; Fredericks grievance*, October 29, 1975. Hinnegan — seven pages. (46)

Week-end work given to part-time employees — not overtime work; grievance dismissed. *Re Canada Spool and Bobbin Company Limited and International Woodworkers of America; Turnbull grievance*, October 28, 1975. Brown, Riggin, Wright — five pages. (47)

Preparation Premium

Entitlement — qualifications used in performance of nurse's normal or assigned duties; grievance allowed. *Re Peel Memorial Hospital and Nurses' Association, Peel Memorial Hospital; Kraft grievance*, October 20, 1975. Majority: Beatty, Richards — 13 pages; dissent: Farrar. (48)

Probationary Employees

Calculation of probationary period — days during which grievor absent due to compensable injury not part of probationary period. *Re Massey-Ferguson Industries Limited and United Automobile Workers* — see (42), *supra*. (49)

Procedure

Alleged agreement of settlement raised after hearing commenced — matter cannot be raised at that point in proceedings. *Re General Spring Products Limited and United Automobile Workers* — see (31), *supra*. (50)

Progression

Employer violating collective agreement by alteration of training programme — grievance allowed. *Re Allied Chemical Canada Limited and United Automobile Workers of America, Local 89; policy grievance*, December 4, 1975. O'Shea — 17 pages. (51)

Retirement

Compulsory retirement: policy unilaterally established by company — extensions in complete discretion of company; grievance dismissed. *Re Trustees of the Ottawa Civic Hospital and Canadian Union of Public Employees, Local 576; Kinkade grievance*, October 27, 1975. Majority: Brown, Morley — 14 pages; dissent: Walsh — three pages. (52)*

Seniority

(1) *MacQueen grievance*: bumping rights — no right to be returned to job; grievance dismissed; (2) *Wilson, Retzer grievances*: bumping rights — no right to displace junior employee on other shift; grievance dismissed; (3) *Marsh, Walters grievance*: temporary job situation — employer not obliged to consider job classification ahead of seniority; grievance dismissed; (4) *MacQueen et al grievances*: temporary job situation — employer not obliged to consider job classification ahead of seniority; grievance dismissed. *Re Webster Manufacturing (London) Limited and International Molders' and Allied Workers' Union, Local 49; grievances as noted above*, November 21, 1975. Majority: Weatherill, Adamson — 24 pages; did not concur: Wohl. (53)

Qualifications for promotion — all applicants qualified — seniority to govern; grievance allowed *re Mous*; dismissed *re Cavers*. *Re General Refractories Company of Canada Limited and United Steelworkers of America, Local 14857; Mous, Cavers grievances*, October 20, 1975. Shime — eight pages. (54)* See also Vol. 5, 7 (56)

Qualifications for promotion — fair and reasonable assessment by company not to be overruled; grievances dismissed. *Re Greey Mixing Equipment Limited and United Steelworkers of America; Simpson et al grievances*, November 11, 1975. Majority: O'Shea, Bernardo — 12 pages; dissent: Grasso — two pages. (55)

Qualifications for promotion — grievor not as qualified; grievance dismissed. *Re National Steel Corporation of Canada Limited and United Steelworkers of America, Local 5500; Chisholm grievance*, September 22, 1975. Majority: O'Shea, Storie — 11 pages; dissent: Keuhl. (56)

Qualifications where short-term lay-off — exercise of seniority rights restricted to lay-offs for more than one day; grievance dismissed. *Re Emanuel Products Limited and International Woodworkers of America; Tarantino, Covelli grievances*, November 18, 1975. Majority: Weatherill, Gray — seven pages; dissent: Chalmers — one page. (57)

Sick Leave

Time of payment of paid sick leave — to be paid at end of pay period in which illness occurred; grievance allowed. *Re Junior Footwear Limited and Boot and Shoe Workers' Union; Bawins grievance*, November 12, 1975. O'Shea — ten pages. (58)

Transfer

Temporary assignment to higher-rated classification during lunch break — grievor entitled to higher rate of pay for time actually spent; grievance allowed. *Re International Nickel Company of Canada Limited and United Steelworkers of America; McNamara grievance*, October 16, 1975. Majority: O'Shea, McVey — 12 pages; dissent: Filion — three pages. (59)

Union Officials

Attendance at union meeting during working hours — attendance not reasonably required; grievance dismissed. *Re International Nickel Company of Canada Limited and United Steelworkers of America, Local 6500; Crapper grievance*, October 17, 1975. O'Shea, Thomson, Filion — 12 pages. (60)

Vacation Pay

Laid-off employees — employees other than probationary entitled to vacation in accordance with terms of collective agreement; grievance allowed. *Re Northern Electric Company Limited and United Automobile Workers, Local 27; group grievance*, November 3, 1975. Weatherill — 12 pages. (61)

Wages

Calculation of average hourly earnings: agreement ambiguous — resort to company's past practice; grievance dismissed. *Re Standard Tube Canada Limited and United Automobile Workers of America, Local 636; Stoodley grievance*, November 26, 1975. Fox — four pages. (62)

Incentive rate not paid for salvage operations — piecework available only when released or assigned by foreman; grievances dismissed. *Re Outboard Marine Corporation of Canada Limited and United Steelworkers of America, Local 5009; Lea, McKenzie grievances*, October 31, 1975. Brown — 11 pages. (63)

Welfare Plans

Entitlement to indemnity benefits — decision to discontinue benefits supported by medical evidence; grievance dismissed. *Re General Spring Products Limited and United Automobile Workers* — see (31), (50), *supra*. (64)

Entitlement to sick benefits — terms of insurance policy incorporated by reference; requiring three months' service; no violation of agreement. *Re Ex-Cell-O Corporation of Canada Limited and International Molders and Allied Workers Union* — see (30), *supra*. (65)

Premiums — employer failing to make contributions; violation of agreement; grievance upheld. *Re Mutual Electric Company Limited and International Brotherhood of Electrical Workers* — see (32), *supra*. (66)

Work Assignment

Failure to assign available work to bargaining unit members — damages awarded; grievance allowed. *Re McKenna Brothers Limited and Plumbers' Union* — see (9), *supra*. (67)*

Foreman performing bargaining unit work — grievance allowed. *Re Columbus McKinnon Limited and United Automobile Workers, Local 199; Stopard grievance*, November 24, 1975. Weatherill — eight pages. (68)

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Filing Awards

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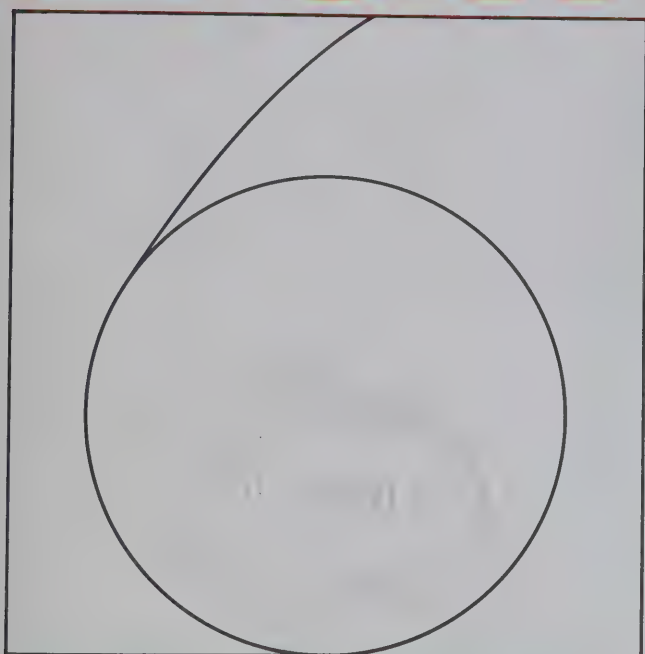
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The Ontario Labour-Management
Arbitration Commission



His Honour Judge Walter Little, Chairman
Mary Calarco, Registrar

Ontario Ministry of Labour
400 University Avenue, 14th Floor
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Hon. Bette Stephenson, M.D., Minister
T. E. Armstrong, QC, Deputy Minister

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Change of Telephone Number

The following change of telephone number should be noted for Professor G. Gail Brent, from (519) 679-2972 to (519) 433-9483.

Awards

The following awards were filed with the Commission during the month of January, under Section 6(2) of Ontario Regulation 635, R.R.O. 1970.

The summary was prepared at the Faculty of Law, Queen's University, under the supervision of C.G. Simmons, B.A., B.C.L., LL.M., D.D. Carter, B.A., LL.B., B.C.L., and R.S. Irwin, B.A., LL.M.

* Indicates award to be reported in full or in part in *Labour Arbitration Cases*.

Arbitrability

Anticipated violation — breach of collective agreement must be shown to have occurred, not that one might arise in

future; scope of grievance restricted. *Re International Nickel Company of Canada Limited and United Steelworkers of America, Local 6500; Sauv  grievance*, November 14, 1975. Majority: O'Shea, Stone — 12 pages; dissent: Signoretti. (1)

Grievance submitted to arbitration same as before another board where no decision yet given — grievance not arbitrable. *Re E.S. and A. Robinson (Canada) Limited and Printing Specialties and Paper Products Union, Local 466; policy grievance*, January 12, 1976. Majority: Ferguson, Pyle — nine pages; dissent: Tate — three pages. (2)

Settlement alleged: frustration of fundamental terms of settlement by employer — no evidence of actual settlement; grievance arbitrable. *Re Canadian Broadcasting Corporation and Canadian Union of Public Employees; Van Deenendal grievance*, November 24, 1975. Second interim award; majority: Brown, Richardson — 15 pages; did not concur: Healy. (3)

Welfare plan — amount of benefits not arbitrable; grievance dismissed. *Re Firestone Canada Limited and United Rubber Workers, Local 113; Battaglio grievance*, January 12, 1976. Majority: O'Shea, Clawson — 10 pages; dissent: Walsh — one page. (4)*

Uncertainty — collective agreement uncertain so as to make grievance not arbitrable. *Re Corporation of the City of Timmins and Canadian Union of Public Employees, Local 210; union grievance*, December 30, 1975. Dunn, Noble, Arsenault — four pages. (5)

Bargaining Unit

Ontario Labour Relations Board determining certain persons employees — persons also falling within "all-employee" bargaining unit; grievance allowed. *Re General Concrete of Canada Limited and United Cement Workers, Local 487; union grievance*, January 5, 1976. Majority: Beatty, T. Davidson — 31 pages; dissent: Hamilton — two pages. (6)*

Bereavement Pay

Loss of overtime because of bereavement — entitlement applying to scheduled working days, not just "regularly" scheduled working days; grievance allowed. *Re Outboard Marine Corporation of Canada Limited and United Steelworkers, Local 5009; Pearson grievance*, January 19, 1976. Ferguson — nine pages. (7)*

Classification

Dual rating — applicable because functions performed falling within two job descriptions; grievance dismissed. *Re International Harvester Company of Canada Limited and United Steelworkers, Local 2868; McKnight grievance*, January 7, 1976. Majority: O'Shea, Stringer — 13 pages; dissent: Young — one page. (8)

Training duties — duties not within core of higher classification; grievance dismissed. *Re Canadian Industries Limited and United Steelworkers; McMahon grievance*, January 23, 1976. Majority: Ferguson, Morley — nine pages; dissent: Wilton. (9)

Collective Agreement

Date of execution — determined by date contained in agreement. *Re Anderson Block and Tile Limited and Labourers' International Union, Local 607; Connors et al grievance*, January 22, 1976. Majority: Bicknell, Elwert — 13 pages; dissent: Holt — three pages. (10)

Memorandum of agreement adding to, and executed at same time as agreement — memorandum incorporated as part of agreement. *Re Raybestos-Manhattan (Canada) Limited and United Steelworkers, Local 5141; Harrington grievance*, January 12, 1976. Hinnegan — ten pages. (11)

Cost of Living Allowance

Timing of adjustments — company to make adjustments in both January and July, with ceiling of ten cents a year to run from second adjustment (July); grievance allowed. *Re Tonka Corporation Canada Limited and International Molders and Allied Workers; policy grievance*, January 5, 1976. Majority: Shime, Wohl — five pages; dissent: Farrar. (12)*

Demotion

Disciplinary demotion alleged — unsatisfactory work performance; grievance dismissed. *Re Russelsteel Limited and United Steelworkers, Local 5958; Sardone grievance*, January 29, 1976. G.S.P. Ferguson, Weaver, O.H. Ferguson — eight pages. (13)

Discharge

Absence exceeding accumulated seniority — right to dismiss including absence due to medical problems; grievance dismissed. *Re Ford Motor Company of Canada Limited and United Automobile Workers, Local 707; Waugh grievance*, November 3, 1975. Palmer — six pages. (14)

Absence without leave — failure to file medical certificate; discharge unjustified; grievor reinstated without compensation. *Re Childers Products Company and Teamsters Union, Local 880, Friars grievance*, August 11, 1975. Stewart, Kobryn, Guignon — seven pages. (15)

Absence without leave — flagrant neglect of job responsibilities; discharge justified. *Re Houdaille Machine Tools of Canada and International Association of Machinists, Lodge 2243; Kappke second grievance*, January 12, 1976. Majority: Andrews, Gilmore — six pages; dissent: Wren. (16)

Absenteeism — reinstatement without compensation because of illness but leave of absence without pay for three months from date of award. *Re National Auto Radiator Company Limited and United Automobile Workers, Local 195; La Fleur grievance*, January 19, 1976. Brandt — ten pages. (17)*

Absenteeism excessive — non-disciplinary discharge not warranted; grievor reinstated without compensation, conditional on attendance record improving within six months. *Re Board of Education of Borough of Scarborough and Canadian Union of Public Employees, Local 149;*

Crowder grievance, January 13, 1976. Hinnegan, Churchill-Smith, Acton — 16 pages. (18)

Absenteeism following illness — grievance allowed: reinstatement with conditional compensation. *Re Victoria Hospital Corporation and London and District Building Service Workers' Union, Local 220; Sadler grievance*, January 9, 1976. Majority: O'Shea, Purdy — 10 pages; partial dissent: Walsh — one page. (19)

Consumption of alcohol on job — discharge justified. *Re Dominion Consolidated Truck Lines Limited and Teamsters, Local 938; Elliott grievance*, December 31, 1975. Majority: Brandt, Kennedy — 13 pages; dissent: Thomson — two pages. (20)

Culminating incident: unsatisfactory work performance — penalty too severe; previous incidents of different type; grievor reinstated without compensation. *Re Pirelli Cables Limited and United Steelworkers, Local 3021, Shields grievance*, September 25, 1975. Palmer, Childs, Walker — eight pages; addendum: Walker — two pages. (21)

"Horseplay" resulting in serious injury to fellow employee — substitution of three-month suspension. *Re McGraw-Edison of Canada Limited and International Union of Electrical, Radio and Machine Workers, Local 595; Stegemann grievance*, January 13, 1976. Dunn, Sanderson, Aslin — three pages. (22)

Insubordination — assault on foreman — discharge not warranted; suspension substituted. *Re Dominion Glass Company and United Glass and Ceramic Workers, Local 203; Somerville grievance*, December 18, 1975. Majority: Linden, Foley — 13 pages; addendum: Foley — one page; partial dissent: Robinson — one page. (23)*

Insubordination: failure to carry out order of foreman — grievance dismissed. *Re Bridge and Tank Company of Canada Limited and United Steelworkers, Local 2537; Sweeney grievance*, January 21, 1976. Majority: O'Connor, McKillop — seven pages; dissent: Pudge — two pages. (24)

Probationary employee — discharge without cause allowed under collective agreement; grievance dismissed. *Re Collins Radio Company of Canada Limited and International Brotherhood of Electrical Workers, Local 1966; Angeles grievance*, November 12, 1975. Majority: J. L. Roberts, Houck — eight pages; dissent: Fisher — two pages. (25)

Quit alleged — failure of company to notify employee of return to work; grievor's actions not amounting to quit: reinstatement without compensation. *Re Raybestos-Manhattan (Canada) Limited and United Steelworkers* — see (11), *supra*. (26)

Theft of company property: grievor acquitted of criminal charges — employer not establishing on balance of probabilities that grievor involved; discharge not justified. *Re Goodyear Tire and Rubber Company of Canada Limited and United Rubber Workers, Local 232; Baverstock grievance*, January 8, 1976. Majority: Adams, Simon — 33 pages; dissent: Storie — nine pages. (27)*

Time of discharge — taking place when discharge communicated to grievors; grievance allowed. *Re Anderson Block and Tile Limited and Labourers' International Union* — see (10), *supra*. (28)

Unsatisfactory work performance alleged — not proven; grievances allowed. *Re Sault Ste. Marie Builders Exchange and Christian Labour Association of Canada; Allen, Wade grievance*, January 9, 1976. Majority: Shime, Olthuis — 17 pages; dissent: Fortin — four pages; addendum: Shime — two pages. (29)

Violation of legal requirements on job — previous poor work record; discharge justified. *Re International Nickel Company of Canada Limited and United Steelworkers, Local 6500; Boudreau grievance*, December 23, 1975. Majority: Weatherill, Gilmore — eight pages; dissent: Keck — two pages. (30)

Discipline

Absence without leave and insubordination to supervisor — five and one-half days suspension justified; grievance dismissed. *Re Houdaille Machine Tools of Canada and International Association of Machinists, Lodge 2243; Kappke first grievance*, January 12, 1976. Majority: Andrews, Gilmore — seven pages; dissent: Wren. (31)

Culminating incident: careless operation of fork lift — suspension without pay appropriate; grievance denied. *Re Livingston Mutual Warehousing Limited and International Woodworkers; Rankel grievance*, December 23, 1975. Majority: Brown, Robinson — ten pages; dissent: Horan — one page. (32)

Destruction of employer's property — onus not met that destruction was wilful; grievance allowed. *Re RCA Limited and International Union of Electrical, Radio and Machine Workers; Davis grievance*, December 16, 1975. Majority: Weatherill, Pattinson — nine pages; dissent: Healey — three pages. (33)

Discourteous remark to senior management — not cause for discipline; grievance allowed. *Re Corporation of the City of Brantford and Brantford Civic Employees Union, Local 181; Makarchuk grievance*, December 15, 1975. Majority: Brandt, Acton — nine pages; dissent: Clark — two pages. (34)

Insubordination — (1) grievor *McNeil* failing to carry out foreman's order: suspension reduced by two days; (2) grievor *Des Rosiers* refusing to comply with manager's request: suspension reduced by one day; grievances allowed in part. *Re Allied Chemical Canada Limited and International Chemical Workers, Local 424; McNeil, Des Rosiers grievances*, January 2, 1976. Weatherill — nine pages. (35)

Insubordination alleged — not proven; grievance allowed. *Re CFTO-TV Limited and National Association of Broadcast Employees and Technicians; group grievance*, December 22, 1975. Rayner — ten pages. (36)

Insubordination: refusal of assignment and assault on foreman — eight-day suspension justified. *Re Columbus McKinnon Limited and United Automobile Workers, Local 199; Luksic grievance*, January 2, 1976. Weatherill — eight pages. (37)

Insubordination: Failure to carry out instructions and accusation of discrimination — written warning substituted for one-week suspension and compensation for time lost. *Re Great West Steel Industries Limited and United Steelworkers, Local 4515; Katz grievance*, January 14, 1976. Shime — ten pages. (38)

Insubordination: refusal to listen to management's comments — one-day suspension upheld. *Re Dominion Stores Limited and Retail, Wholesale and Department Store Union, Local 414, Fuller grievance 1*, December 17, 1975. Majority: Curtis, Heather — nine pages; dissent: Hall. (39)

Insubordination; refusal to perform work assigned in bumping situation — three-day suspension justified. *Re Canadian Lukens Limited and United Steelworkers; Burrell grievance*, January 12, 1976. O'Shea — ten pages. (40)

Insubordination: refusal to perform work assignment because believed to be unsafe — assignment could be performed safely; grievance dismissed. *Re Lake Ontario Steel Company Limited and United Steelworkers, Local 6571; Anderson grievance*, January 7, 1976. Majority: Weatherill, McGowan — seven pages; dissent: Barko — three pages. (41)

Insubordination: supervisor threatened — penalty too severe in light of supervisor's conduct; level three warning substituted for level four. *Re International Nickel Company of Canada Limited and United Steelworkers, Local 6500; Renaud grievance*, December 9, 1975. Gorsky, Winkler, Thomson — 15 pages. (42)

Remark to foreman basis of suspension — warning substituted for suspension and compensation for time lost. *Re Great West Steel Industries Limited and United Steelworkers, Local 4515; Johnson grievance*, January 14, 1976. Shime — five pages. (43)

Suspension pending outcome of criminal charges — suspension improper; full compensation awarded. *Re Goodyear Tire and Rubber Company of Canada and United Rubber Workers* — see (27), *supra*. (44)*

Unauthorized absence — violation of company rule; grievance dismissed. *Re FMC of Canada Limited and United Steelworkers; Fengler grievance*, December 31, 1975. Majority: Ferguson, Whittaker — 12 pages; dissent: Berry — two pages. (45)

Estoppel

Defence offered by employer at step two of grievance — union having full opportunity to meet defence; estoppel not applicable. *Re Regional Municipality of Durham and Canadian Union of Public Employees, Local 1764; Kitzov grievance*, December 16, 1975. Majority: Baum, Noble — 13 pages; dissent: Rutherford — two pages. (46)

Failure to object to exclusion from bargaining unit — estoppel not applicable. *Re General Concrete of Canada Limited and United Cement Workers* — see (6), *supra*. (47)*

Past practice — employer not estopped from discontinuing practice not required in agreement; grievance dismissed. *Re Corporation of City of London and Canadian Union of Public Employees, Local 101; policy grievance*, December 1, 1975. Majority: Stewart, Noble — 23 pages; dissent: Parker — 24 pages. (48)

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Reply evidence — evidence not tendered in response to defence inadmissible as reply evidence. *Re Goodyear Tire and Rubber Company of Canada and United Rubber Workers* — see (27), (44), *supra*. (49)*

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Compliance: persons involved in step three procedure not precluded by agreement — procedure complied with in spirit; grievance arbitrable. *Re Corporation of City of London and Canadian Union of Public Employees* — see (48), *supra*. (50)

Nature of grievance: grievance concerning clearance of employee's record — individual, not union grievance. *Re Dominion Stores Limited and Retail, Wholesale and Department Store Union, Local 414; Fuller grievance 2*, December 17, 1975. Curtis, Heather, Hall — seven pages. (51)

Timeliness: time limits of grievance procedure not followed by employer — grievance considered settled in grievor's favour. *Re Spar Aerospace Products Limited and United Automobile Workers, Local 112; Notaras grievance*, January 8, 1976. Brown — 11 pages. (52)*

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Calculation of amount: employees working ten-hour shifts — entitled under collective agreement to be paid according to eight-hour shift; grievance dismissed. *Re Falconbridge Copper Limited and Sudbury Mine, Mill and Smelter Workers; policy grievance*, December 11, 1975. Rayner — six pages. (53)*

Qualifying days: lay-off immediately following holiday — employees recalled for first full working day entitled to holiday pay; grievance upheld. *Re Robbins and Myers Company of Canada Limited and United Automobile Workers, Local 397; policy grievance 059*, January 2, 1976. Ord — seven pages. (54)

Recall prior to holiday — entitled to payment under collective agreement; grievance allowed. *Re Olsonite Manufacturing Limited and United Automobile Workers, Local 195; group grievance*, January 6, 1976. R.J. Roberts — 12 pages. (55)*

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Evaluation of employer challenged — no violation of collective agreement; grievance dismissed. *Re Northern Electric Company Limited and United Automobile Workers, Local 1535; Schmeler grievance*, December 23, 1975. Brown — ten pages. (62)

Evaluation of employer challenged — no violation of collective agreement; grievance dismissed. *Re Northern Electric Company Limited and United Automobile Workers, Local 1535; Salamanchuk grievance*, December 23, 1975. Brown — nine pages. (63)

Evaluation of employer challenged — no violation of collective agreement; grievance dismissed. *Re Northern Electric Company Limited and United Automobile Workers, Local 1535; Robertson grievance*, December 23, 1975. Brown — 14 pages. (64)

Evaluation of employer challenged — no violation of collective agreement; grievance dismissed. *Re Northern Electric Company Limited and United Automobile Workers, Local 1535; Cole grievance*, December 23, 1975. Brown — nine pages. (65)

Job Posting

Existence of vacancy — proper determination made; not adequate work in classification to justify job posting; grievance dismissed. *Re R.J. Simpson Manufacturing Company (Canada) Limited and United Automobile Workers, Local 1738; policy grievance*, January 15, 1976. Hinnegan — 14 pages. (66)*

Existence of vacancy — work available requiring position to be filled; grievance allowed. *Re Corporation of City of Belleville and Belleville Professional Fire Fighters' Association; policy grievance*, December 29, 1975. McIver — 11 pages. (67)*

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Failure to post lead-hand position on day shift: (1) employer entitled to alter shift assignment within same job classification — no requirement to post; (2) alleged bad faith not supported by evidence — grievance dismissed. *Re Canadian Admiral Corporation Limited and International Union of Electrical, Radio and Machine Workers, Local 545; policy grievance*, January 9, 1976. Majority: Brandt, Pyle — ten pages; dissent: Aslin. (69)

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Reinstated employee — not entitled to consideration where job posting during discharge; grievance dismissed. *Re Letter Carriers' Union of Canada (employer) and Office and Professional Employees' International Union, Local 222; Lepine grievance 36*, January 2, 1976. Curtis — nine pages. (71)*

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Cross-bumping between companies for members of union committee — membership of committee not specified by collective agreement; grievance dismissed. *Re Wright Assemblies Limited and E.J. Wright Central Limited and United Steelworkers; Pembleton grievance*, December 11, 1975. Majority: Gorsky, McComb — six pages; dissent: Brooks. (72)

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Rules relating to granting of credit to employees — rules not clear; employee not liable for losses. *Re Royal Oak Dairy Limited and Dairy and Bakery Workers, Local 422; Gahagan grievance*, December 1, 1975. Majority: J.L. Roberts, Spaxman — 15 pages; did not concur: Walker. (75)

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Calculation of hours worked in excess of 40 hours — hours worked in job classification not covered by agreement not to be used in establishing entitlement to overtime. *Re International Nickel Company of Canada Limited and United Steelworkers, Local 6500; St. Germain grievance*, December 17, 1975. Gorsky, Clark, Thomson — ten pages. (76)

Distribution — evidence establishing senior grievor neither willing nor able to perform overtime work; grievance dismissed. *Re M. Loeb (London) Limited and Teamsters, Local 141; Roberts grievance*, October 16, 1975. Stewart, McGee, Kobryn — ten pages; addendum: McGee — one page. (77)

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Unilateral imposition of weekend work schedule — violation of collective agreement; original schedule reinstated. *Re Ontario Educational Communications Authority and National Association of Broadcast Employees and Technicians; policy grievance*, January , 1976. Linden — nine pages. (88)

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Qualifications for promotion — employer's conclusion that grievor less qualified reasonable; grievance dismissed. *Re Hydro-Electric Power Commission of Ontario and Office and Professional Employees; Leggett grievance*, January 21, 1976. Majority: Beatty, Robinson — 19 pages; dissent: Simon — two pages. (92)*

Qualifications for promotion — employer entitled to establish qualifications higher than those required by law; grievance dismissed. *Re Regional Municipality of Niagara and Canadian Union of Public Employees, Local 1263; Unruh grievance*, January 5, 1976. Majority: J.L. Roberts, Kidd — 14 pages; did not concur: Ashdown. (93)

Qualifications for promotion — grievor less qualified; grievance dismissed. *Re Letter Carriers' Union of Canada (employer) and Office and Professional Employees' International Union, Local 222; Lepine grievance 35*, January 2, 1976. Curtis — nine pages. (94)*

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Qualifications for promotion — trial period not to provide period of training; grievance dismissed. *Re Nestle (Canada) Limited and Retail, Wholesale, Dairy and General Workers, Local 440; Boyd, Woods grievance*, October 15, 1975. Majority: Palmer, Houck — seven pages; dissent: Hennessy — two pages. (96)

Qualifications for promotion to full-time position — grievor failing medical test; grievance dismissed. *Re Dominion Stores Limited and Retail, Wholesale and Department Store Union, Local 579; Yackison grievance*, November 26, 1975. Majority: Brown, White — seven pages; dissent: Peterson. (97)

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Qualifications where lay-off — female grievors not possessing physical capacity to perform work; grievances dismissed. *Re General Signal Appliances Limited and United Steelworkers; Litalien, McMahon grievances*, December 23, 1975. Majority: Brown, Cook — 14 pages; dissent: Marshall — two pages. (99)*

Qualifications where lay-off — grievor equally qualified; grievance allowed. *Re Associated Tool and Machine Company and International Association of Machinists and Aerospace Workers, Local 2243; Leckie grievance*, January 6, 1976. Adams, Singer, Wren — eight pages. (100)

Qualifications where lay-off — grievor less qualified; grievance dismissed. *Re Canadian Hanson Limited and United Steelworkers, Local 14183; Robson grievance*, December 16, 1975. Majority: O'Shea, Morley — ten pages; dissent: Grasso. (101)

Qualifications where lay-off — grievor not possessing requisite skill and ability; grievance dismissed. *Re Great Atlantic and Pacific Company of Canada Limited and Canadian Food and Allied Workers, Local 633; Vierira grievance*, January 15, 1976. Majority: Curtis, Winkler — 13 pages; dissent: Simon — two pages. (102)

Qualifications where lay-off — no entitlement to trial period; grievance dismissed. *Re Johnson Controls Limited and International Brotherhood of Electrical Workers, Local 1966; Little grievance*, January 1976. Majority: O'Connor, Sargeant — six pages; dissent: Fisher — two pages. (103)

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Day in lieu of statutory holiday coinciding with sickness — not entitled to sick pay as employee already earning money on that day; grievance dismissed. *Re Hospital Commission, Sarnia General Hospital and London and District Building Service Workers' Union, Local 220; Burr grievance*, December 3, 1975. Palmer, Phelps, Walsh — six pages; addendum: Walsh — one page. (105)

Entitlement — failure to provide proper evidence of illness when requested by company; grievance dismissed. *Re Dominion Stores Limited and Retail, Wholesale and Department Store Union, Local 414; Crawford grievance*, January 9, 1976. Majority: Brown, White — seven pages; dissent: Reekie — one page. (106)

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Lay-off resulting from picketing — no entitlement; grievances dismissed. *Re General Motors of Canada Limited and United Automobile Workers; Berube et al grievances*, December 3, 1975. Palmer — five pages. (107)

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Calculation of earnings: pay previously paid not to be considered as part of wages; grievance dismissed. *Re Robbins and Myers of Canada Limited and United Automobile Workers* — see (84), *supra*. (110)*

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Mailing List

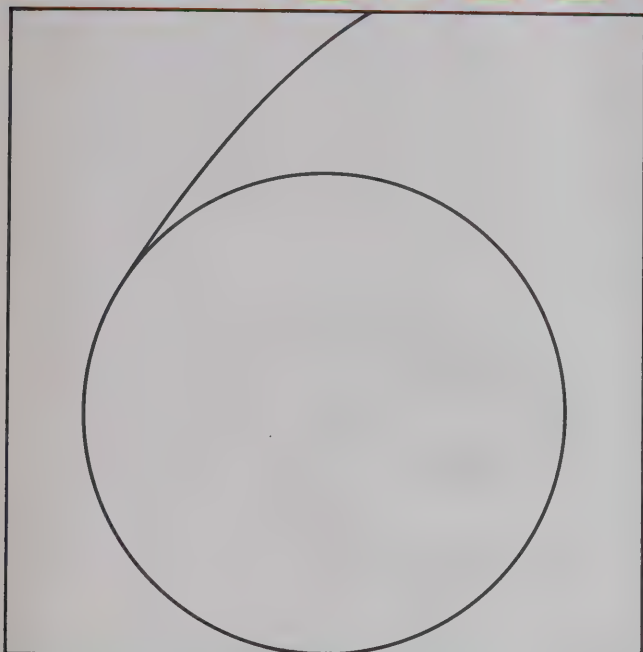
The Commission is preparing a comprehensive mailing list of persons interested in receiving the monthly Bulletin.

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Government
Publications

Monthly Bulletin



The Ontario Labour-Management
Arbitration Commission

His Honour Judge Walter Little, Chairman
Mary Calarco, Registrar



Ontario Ministry of Labour
400 University Avenue, 14th Floor
Toronto, Ontario
M7A 1T7

Hon. Bette Stephenson, M.D., Minister
T. E. Armstrong, QC, Deputy Minister

May, 1976
Volume 6, Number 2

Published monthly
by the Commission as a service to persons
involved in labour-management
arbitrations.

Arbitrators

The following person has been approved as chairman of boards of arbitration or single arbitrator pursuant to The Ontario Labour-Management Arbitration Commission Act and Ontario Regulation 635:

Professor Stanley M.D. Beck, Osgoode Hall Law School, York University, 4700 Keele Street, Downsview, Ontario, M3J 2R5; telephone (416) 667-3146.

The qualifications of the following persons are such that they meet the criteria laid down by the Commission, making them suitable persons to sit as sole arbitrators or chairmen of boards of arbitration, except that the criterion of mutual acceptability to unions and management has not been fully demonstrated. Although they may have had arbitration experience, they have not been mutually agreed upon a sufficient number of times in the past to enable them to meet the foregoing criterion necessary to entitle them to be accredited for inclusion on panels. As soon as they meet this criterion they will be considered for full accreditation.

Professor Peter G. Barton, Faculty of Law, The University of Western Ontario, London, Ontario, N6A 3K7; telephone (519) 679-2726.

S.R. Ellis, Esq., Barrister, 1267 Queen Street, West, Toronto, Ontario, M6K 1L5; telephone (416) 531-2411.

Changes of Address or Telephone Number

The following changes should be noted:

Mr. T.C. O'Connor, Suite 55 has been changed to Suite 301, at 1250 Bay Street, Toronto, Ontario, M5R 2B2.

The telephone number of Professor A.M. Kruger has been changed from (416) 928-5301 to (416) 978-5301.

The telephone number of Professor S.A. Schiff has been changed from (416) 928-3724 to (416) 978-3724.

Awards

The following awards were filed with the Commission during the months of January and February, under Section 6(2) of Ontario Regulation 635, R.R.O. 1970.

The summary was prepared at the Faculty of Law, Queen's University, under the supervision of C.G. Simmons, B.A., B.C.L., LL.M.; D.D. Carter, B.A., LL.B., B.C.L., and R.S. Irwin, B.A., LL.M.

*Indicates award to be reported in full or in part in *Labour Arbitration Cases*.

Arbitrability

Jurisdiction of board: alleged unfair treatment not founded on any provision of collective agreement; grievance not arbitrable. *Re Canadian National Telecommunications and Canadian National Telecommunications Union, United Telegraph Workers, Local 43; Bryanton grievance*, January 12, 1976. Majority: Rayner, Dinsdale — seven pages; dissent: Pethick — three pages. (1)*

Jurisdictional dispute between unions not resolved according to agreed procedure — union unable to rely on union security clause in collective agreement; grievance dismissed. *Re Comstock International Limited and International Union of Operating Engineers, Local 793; union grievance*, January 26, 1976. O'Shea, Kobryn, Beldham — 19 pages. (2)*

Bargaining Unit

Company failing to recognize union as bargaining agent: employees in question not within union recognition clause in agreement; grievance dismissed. *Re Chrysler Canada Limited and Canadian Union of Operating Engineers, Local 102; union grievance*, February 12, 1976. Palmer — eight pages. (3)

Supervisory personnel performing bargaining unit work — company in violation of agreement; grievance allowed. *Re Fruehauf Trailer Company of Canada Limited and United Automobile Workers, Local 252; Janjevic, policy grievance*, October 29, 1975. Rayner — four pages. (4)

Bereavement Leave

Extent of entitlement — collective agreement providing option of taking three days' leave; grievance allowed. *Re Corporation of City of Kitchener and International Brotherhood of Electrical Workers, Local 2345; Bieth grievance*, October 2, 1975. Majority: Palmer, Weisbach — five pages; dissent: Storie — two pages. (5)

Call-back Pay

Entitlement — grievor volunteering to work overtime on next shift; grievance allowed. *Re Vistoria Hospital Corporation and London and District Building Service Workers, Local 220; Jones grievance*, January 28, 1976. Brown, Churchill-Smith, Walsh — eight pages. (6)

Entitlement when overtime cancelled — proper notice of cancellation given; grievance dismissed. *Re Inglis Limited and United Automobile Workers, Local 525; Thompson grievance*, November 30, 1975. Rayner, Stoodley, Rogers — six pages. (7)

Classification

Job content — change in work-load not changing job content; grievance allowed in part. *Re Westroc Industries Limited and United Cement, Lime and Gypsum Workers, Local 366; union grievance*, January 9, 1976. Beck, Clancy, Shier — 20 pages. (8)

Job duties common to both classifications — no entitlement to rate for higher job; grievance dismissed. *Re Ferranti-Packard Limited and United Electrical Workers, Local 525; Ennis grievance*, December 12, 1975. Majority: Rayner, Riggs — seven pages; dissent: Screen — three pages. (9)

Collective Agreement

Bulletin posted re distribution of overtime; policy implemented for several years — bulletin part of agreement between parties. *Re Municipality of Metropolitan Toronto and Toronto Civic Employees' Union, Local 43, CUPE; White grievance*, January 15, 1976. McCulloch, Pyle, Tate — 12 pages; addendum: Tate — one page. (10)

Contracting Out

Caretaking personnel — insufficient evidence offered that employees of contractor falling within bargaining unit; grievance dismissed. *Re Stormont, Dundas and Glengarry County Board of Education and Canadian Union of Public Employees, Local 782; policy grievance*, February 16, 1976. Dunn, Comrie, Walsh — three pages. (11)

Disability Benefits

Requalification for long-term benefits — six-month period stipulated in insurance policy binding and incorporated into agreement; grievance dismissed. *Re Brewers Warehousing Company Limited and United Brewers Warehousing Workers Provincial Board; policy grievance*, December 22, 1975. Rayner — ten pages. (12)

Discharge

Absence from work: physical ability to perform work before return to work not proven by company; reinstatement with compensation. *Re Ford Motor Company of Canada Limited and United Automobile Workers, Local 707; Brewster grievance*, January 5, 1976. Palmer — five pages. (13)

Absence without notification — chronic alcoholism; mitigating circumstances — record of employee improved; reinstatement without compensation. *Re Molsons Brewery (Ontario) Limited and International Union of United Brewery Workers of America, Local 30; Murray grievance*, January 5, 1976. Rayner — six pages. (14)

Absence without permission: valid request for leave being denied — no undue interference with company's operations; suspension substituted. *Re Inglis Limited and United Steelworkers, Local 2900; Domonyik grievance*, January 28, 1976. O'Shea — 13 pages. (15)

Absenteeism — evidence did not establish illness as cause; grievance dismissed. *Re Hill Refrigeration of Canada Limited and United Steelworkers, Local 6547; Archibald grievance*, February 6, 1976. Ferguson — nine pages. (16)

Absenteeism excessive: legitimate reasons — evidence disclosing probability of future unreasonable rate of absenteeism; discharge appropriate. *Re Dominion Stores Limited and Retail, Wholesale and Department Store Union, Local 414; Harakas grievance*, February 23, 1976. Brown, White, Spaxman — 18 pages. (17)

Assault on supervisor — discharge justified; grievance dismissed. *Re Heintzman and Company Limited and International Woodworkers of America; Lerch grievance*, February 20, 1976. Majority: Weatherill, Hersey — nine pages; dissent: Horan — two pages. (18)

Culminating incident: absence without leave — failing to report; grievance dismissed. *Re Koehring-Waterous Limited and International Association of Machinists and Aerospace Workers, Lodge 1105; Lamont grievance*, February 3, 1976. Majority: Dunn, Storie — three pages; dissent: Wren. (19)

Culminating incident — previous charge of theft — untruthful explanation of absence; grievance dismissed. *Re Burlington Steel Company and United Steelworkers of America, Local 4752; Turner grievance*, February 5, 1976. Weatherill — six pages. (20)

Deemed quit — involuntary absence for specified period because of jail term; grievance dismissed. *Re International Nickel Company of Canada Limited and United Steelworkers, Local 6500; Leigh grievance*, February 2, 1976. Majority: Brandt, Sanderson — 19 pages; dissent: Thompson — three pages. (21)

Damage to machinery — mitigating circumstances — suspension for two months substituted. *Re Northern Electric Company Limited and United Automobile Workers, Local 1837; MacMillan grievance*, February 13, 1976. Gorsky — 11 pages. (22)

Failure to report absences — discharge before lapse of three full days; grievor reinstated. *Re Northern Electric Company Limited and United Electrical, Radio and Machine Workers, Local 531, Brown grievance*, February 11, 1976. Brown — 11 pages. (23)

Gross carelessness: failure to conduct proper tour of inspection; suspension without pay substituted. *Re Air Canada and International Association of Machinists and Aerospace Workers; McLean grievance*, February 23, 1976. Brown — 26 pages. (24)

Impaired driving on job — discipline limited by content of warning letter; suspension without pay substituted. *Re Corporation of City of Guelph and Canadian Union of Public Employees, Local 241; Roberts grievance*, February 23, 1976. Majority: Dunn, Maddison — five pages; dissent: Williamson — five pages. (25)

Insubordination: deliberate and reckless starting of a fire; falsification of employment form; grievance dismissed. *Re Provincial Gas Company and United Electrical, Radio and Machine Workers, Local 517; Boyd, Richards grievances*, January 15, 1976. Majority: Kruger, Sanderson — 15 pages; dissent: Wright — two pages. (26)

Insubordination — failure to comply with orders and then file grievance; grievance dismissed. *Re Glendale Mobile Homes Limited and International Association of Machinists and Aerospace Workers, Local 2374; Boyce grievance*, January 31, 1976. Majority: Ferguson, Stringer — 11 pages; dissent: Wren — three pages. (27)

Insubordination: leaving plant without permission — discharge not justified in case of illness; reinstatement with compensation. *Re Canada Valve Limited and International Molders and Allied Workers, Local 279; Zele grievance*, January 29, 1976. Majority: Shime, Wohl — nine pages; dissent: Farrar — three pages. (28)

Insubordination: refusing to follow instructions — mitigating circumstances; reinstatement without compensation. *Re Tamco Limited and United Automobile workers, Local 195; De Broe grievance*, January 16, 1976. Majority: Kruger, McConville — eight pages; dissent: Bartlet — three pages. (29)

Insubordination: refusing to perform work — discharge not justified; reinstatement without compensation. *Re Reed Decorative Products Limited and Printing Specialties and Paper Products Union, Local 466; Allison grievance*, February 23, 1976. Majority: Dunn, Tate — five pages; dissent: Fillion — two pages. (30)

Poor workmanship and attitude of union official: insufficient cause for dismissal; reinstatement without compensation. *Re Sasco Steel Limited and United Steelworkers; Accurso grievance*, January 13, 1976. Ord — ten pages. (31)

Probationary employee — valid cause for discharge established; grievance dismissed. *Re Chrysler Canada Limited and Canadian Union of Operating Engineers, Local 102; Patterson grievance*, February 6, 1976. Ferguson — 13 pages. (32)

Discipline

Damage to equipment — no evidence of recklessness or lack of proper regard for work or equipment; grievance allowed. *Re FMC of Canada Limited and United Steelworkers, Local 3394; Sahinbas grievance*, February 4, 1976. Majority: Weatherill, Berry — eight pages; partial dissent: Whittaker — one page. (33)

Failure to perform assigned work — step two discipline justified; grievance dismissed. *Re International Nickel Company of Canada Limited and United Steelworkers, Local 6500; Shuart grievance*, February 2, 1976. Majority: O'Shea, Stone — ten pages; dissent: McVey. (34)

Hearing prior to imposition of discipline required by agreement — absence of fair hearing; suspension removed. *Re Canadian Pacific Limited (Telecommunications Department) and Canadian Telecommunications Union, Division 1, United Telegraph Workers; Zawoyski grievance*, February 12, 1976. Beck — 11 pages. (35)

Insubordination: abusive and threatening language — such conduct not justified; grievance dismissed. *Re International Nickel Company of Canada Limited and United Steelworkers; Bauman grievance*, February 1, 1976. Shime, Werry, Rouleau — eight pages. (36)

Insubordination: failing to complete work assignment — suspension justified; grievance dismissed. *Re Brewers Warehousing Company Limited and United Brewers Warehousing Workers' Provincial Board; Poirier grievance*, February 23, 1976. Brown — 14 pages. (37)

Insubordination: loafing on job — company failing to meet onus of proof; grievance allowed. *Re International Nickel Company of Canada Limited and United Steelworkers; Lodge grievance*, September 25, 1975. Majority: Palmer, McDonald — seven pages; dissent: Clark — one page. (38)

Insubordination: refusing to complete work assignment through inability — premature return to work after illness; suspension removed without compensation. *Re Kanmet Limited and International Molders and Allied Workers, Local 194; Bilicky grievance*, January 28, 1976. Majority: Shime, Wohl — eight pages; dissent: Winkler — one page. (39)

Insubordination: refusing to do work assigned — no reasonable excuse for refusal; grievance denied. *Re*

International Nickel Company of Canada Limited and United Steelworkers, Local 6500; Stoutenberg grievance, January 19, 1976. Majority: O'Shea, R.A. Abbott — eight pages; dissent: McVey. (40)

Insubordination: refusing to do work assigned — refusal not justified; grievance dismissed. *Re John Wood Company Limited and United Automobile Workers, Local 124; Surman grievance*, September 22, 1975. Palmer — six pages. (41)

Insubordination: refusal to work due to unsafe working conditions and leaving company equipment unattended — conditions not shown to be unsafe; suspension justified. *Re Emerson Electric Canada Limited and United Electrical, Radio and Machine Workers, Local 522; Mutch grievance*, February 19, 1976. Majority: Curtis, Payette — 12 pages; dissent: Screen — one page. (42)

Insubordination: refusal to work overtime — order illegal under *The Employment Standards Act*; suspension removed from grievor's record and grievor compensated. *Re National Starch and Chemical Company (Canada) Limited and Canadian Union of United Brewery Workers; Chesney grievance*, February 4, 1976. Rayner — seven pages. (43)*

Neglect of duties alleged — loafing on company time — step two reprimand reduced to step one; grievance allowed in part. *Re International Nickel Company of Canada Limited and United Steelworkers, Local 6500; Ouelette grievance*, December 10, 1975. Majority: Simmons, McVey — five pages; addendum: McVey — one page; dissent: Sanderson. (44)

Poor workmanship resulting in substandard product — suspension justified; grievance dismissed. *Re Budd Automotive Company of Canada Limited and United Automobile Workers, Local 1451; Brousseau grievance*, January 29, 1976. Palmer — nine pages. (45)

Refusal to work overtime — allegation that grievor created "overtime ban" among employees not proven; suspension not justified. *Re Wabco Limited and United Electrical, Radio and Machine Workers, Local 558; Young grievance*, January 23, 1976. Majority: J.L. Roberts, Bullock — 14 pages; addendum: Bullock — one page; dissent: Binning — one page. (46)

Failure to report for work — alleged reckless exposure to danger leading to a beating; reinstatement with compensation. *Re National Auto Radiator Manufacturing Company Limited and United Automobile Workers, Local 195; Grant grievance*, October 20, 1975. Palmer — five pages. (47)

Offence of "unsatisfactory work performance" not contained in plant rules; grievance allowed. *Re Ford Motor Company of Canada Limited and United Automobile Workers, Local 707; policy grievance K647*, January 6, 1976. Palmer — five pages. (48)

Using offensive language — period of suspension appropriate due to previous infraction; grievance dismissed. *Re Gould Manufacturing of Canada Limited and International Association of Machinists and Aerospace Workers, Local 1975; Duwyn grievance*, January 31, 1976. Majority: Brent, Storie — nine pages; dissent: Wren — seven pages. (49)

Estoppel

Past practice concerning calculation of vacation pay — company bound by past practice and its representations to union amounting to acquiescence in union's interpretation; grievance allowed. *Re Barber Ellis of Canada Limited and United Automobile Workers, Local 397; policy grievance*, February 23, 1976. Brown — 11 pages. (50)*

Past conduct of company in calculation of grievor's seniority; break in employment treated as absence with leave; grievance allowed. *Re R. Huber and Company (Canada) Limited and International Woodworkers of America; De Marco seniority grievance*, January 30, 1976. Majority: Shime, Horan — five pages; dissent: Hersey — four pages. (51)*

Past practice: employer's past practice consistently accepted by union — union estopped from claiming violation of collective agreement; grievance dismissed. *Re Hotel Dieu of St. Joseph Hospital and Ontario Nurses Association; Ouellette grievance*, January 27, 1976. Ferguson, Bartlet — 14 pages; addendum: Bartlet — one page; dissent: Walsh — three pages. (52)*

Grievance Procedure

Timeliness: whether a bar to existing grievance — continuing nature of grievance established; grievance timely. *Re Beacon Hill Lodges of Canada Limited and Service Employees' Union, Local 210; Senechal grievance*, July 7, 1975. Interim majority award: Palmer, Simko — nine pages; dissent: Bartlet. (53)

Holiday Pay

Calculation — cost of living allowance not to be included; grievance dismissed. *Re National Hardware Specialties Limited and United Automobile Workers, Local 251; union grievance*, February 24, 1976. Brent — eight pages. (54)

Qualifying days not worked by grievor because of personal plans; grievance dismissed. *Re National Hardware*

Specialties Limited and United Automobile Workers, Local 580; Bear grievance, February 2, 1976. Brown — 13 pages. (55)

Job Evaluation

Change in rating — new job classification: experience factor improperly ranked, initiative factor correctly ranked; grievance allowed in part. *Re Westinghouse Canada Limited and United Electrical, Radio and Machine Workers, Local 549; Slaght grievance*, January 26, 1976. Majority: Palmer, Clancy — 12 pages; dissent: Morley — three pages. (56)

Classification of "responsibility for the safety of others" factor — whether sufficient change in work done established; grievance dismissed. *Re Westinghouse Canada Limited and United Electrical, Radio and Machine Workers, Local 546; group grievance*, January 13, 1976. Majority: Palmer, Drmaj — ten pages; dissent: Clancy. (57)

Job Posting

Discrimination on basis of a discipline charge — employer acknowledging entitlement but position has disappeared; grievance dismissed. *Re FMC of Canada Limited and United Steelworkers* — see (33), *supra*. (58)

No job vacancy within meaning of collective agreement; grievance dismissed. *Re Kelsey-Hayes Canada Limited and United Automobile Workers, Local 636; policy grievance*, December 5, 1975. Rayner — five pages. (59)

Job Vacancy

Existence of vacancy depending on position being available and sufficient work to be performed; grievance dismissed. *Re Toronto Hydro-Electric System and Canadian Union of Public Employees, Local 1; Gillies grievance*, undated award filed February 3, 1976. Linden — six pages. (60)

Lay-off causing job opening — whether job vacancy provisions of collective agreement apply; grievance dismissed. *Re Steel Equipment and United Steelworkers, Local 3257; Jones grievance*, January 27, 1976. Majority: O'Shea, White — nine pages; dissent: Warrian. (61)

Lay-off

Emergency situation — company not being required to follow seniority procedure; grievance dismissed. *Re 3M Canada Limited and United Automobile Workers; group grievance*, October 21, 1975. Palmer — six pages. (62)

Interpreting collective agreement where lay-off alleged; grievance dismissed. *Re Consolidated-Bathurst Packaging Limited and International Woodworkers, Local 2-337; Warren grievance*, January 28, 1976. Majority: O'Shea, Robinson — nine pages; dissent: Richardson. (63)

Seniority — company not obliged to displace other employees where grievor unable to do work of least senior employee; grievance dismissed. *Re Johnson Matthey and Mallory Limited and Precious Metal Workers, Federal Local 24739, CLC; Carter grievance*, January 26, 1976. Majority: Palmer, Murray — six pages; dissent: Simon. (64)

Temporary lay-off of all employees — material shortage in continuous process operation; grievance dismissed. *Re Outboard Marine Corporation of Canada Limited and United Steelworkers, Local 5009; group grievance*, February 10, 1976. Hinnegan — 16 pages. (65)

Maternity Leave

Sick leave distinguished: union estopped from claiming violation of collective agreement by consistent acceptance of employer's past practice; grievance dismissed. *Re Hotel Dieu of St. Joseph Hospital and Ontario Nurses' Association* — see (52), *supra*. (66)*

Overtime

Compulsory under collective agreement — lack of reasonable excuse for refusal to work overtime justified threat of suspension; grievance dismissed. *Re Bridge and Tank Company of Canada Limited (Hamilton Bridge Division) and United Steelworkers, Local 2537; Sweeney grievance*, January 30, 1976. O'Shea, Pudge, McKillop — ten pages. (67)*

Distribution — collective agreement specifying distribution among grievor's working group; grievance allowed. *Re International Nickel Company of Canada Limited and United Steelworkers; Penton grievance*, January 22, 1976. Majority: Palmer, Thomson — seven pages; dissent: Binning — two pages. (68)

Distribution — company-established posted records inaccurate — rectification allowed; grievance allowed in part — compensation ordered. *Re Standard Tube Company Limited and United Automobile Workers; Gee grievance*, November 6, 1975. Rayner — seven pages. (69)*

Distribution — overtime assigned reasonably; no unfairness established by the grievor; grievance dismissed. *Re Municipality of Metropolitan Toronto and Toronto Civic Employees' Union* — see (10), *supra*. (70)

Distribution — past practice not relevant; not required by collective agreement; grievances dismissed. *Re American Can of Canada Limited and Can Workers' Federal Union, Locals 353, 354, 535, CLC; Brettle et al grievances*, January 30, 1976. Majority: Brown, Morley — 11 pages; did not concur: Walsh. (71)

Promotion

Qualifications and skill — personality and potential held relevant criteria — employer acted honestly; grievance dismissed. *Re Great Atlantic and Pacific Company of Canada Limited and Canadian Food and Allied Workers, Local 175; Dawson grievance*, February 3, 1976. Majority: Brandt, Cook — 16 pages; dissent: Lenkinski — one page. (72)*

Qualifications — full-time official paid by company refused promotion because he would not be performing the work; grievance dismissed. *Re Northern Electric Company Limited and United Automobile Workers, Local 1839; Hope grievance*, January 5, 1976. Palmer — six pages. (73)*

Training period — delay alleged to be in violation of agreement; grievance dismissed. *Re Canadian Industries Limited and United Steelworkers, Local 13328; Sunstrum grievance*, February 13, 1976. Majority: Weatherill, Healy — 12 pages; dissent: Mayne — two pages. (74)

Recall

Order of recall: seniority governing when employees equally qualified; grievance dismissed. *Re Keeprite Products Limited and Keeprite Workers' Independent Union; policy grievance*, November 29, 1975. Rayner — eight pages. (75)

Reporting Pay

Entitlement — grievors sent home because of possible contact with typhoid; grievances dismissed. *Re Kysor Industrial of Canada Limited and United Automobile Workers, Local 347; King, Aerssen grievances*, February 19, 1976. Brandt — six pages. (76)*

Seniority

Qualifications for promotion — employer's conclusion that grievor not qualified unreasonable; grievance allowed. *Re Whitby Welding Limited and International Association of Bridge, Structural and Ornamental Iron Workers, Local 757; Ricci grievance*, January 14, 1976. Majority: O'Shea, Chappell — 13 pages; dissent: Sparling — two pages. (77)*

Qualifications for promotion — grievor not qualified; grievance dismissed. *Re GSW Appliances Limited and United Steelworkers, Local 3129; Ducharme grievance*, January 29, 1976. O'Shea — 12 pages. (78)

Subsistence Allowance

Entitlement — employees assigned work prior to collective agreement; grievance allowed. *Re Stone and Webster of Canada Limited and International Association of Bridge, Structural and Ornamental Ironworkers, Local 786; Borgford et al grievance*, January 16, 1976. Majority: Ord, Kobryn — nine pages; dissent: Forbes — two pages. (79)

Supplemental Health Benefits

Definition of dependents — female employees can claim only those persons classed as their dependants for income tax purposes; grievances dismissed. *Re Kirsch of Canada Limited and United Automobile Workers, Local 636; Girolodi, Dean grievances*, February 17, 1976. Palmer — seven pages. (80)

Temporary Employee

Displacement of regular employee alleged — no violation of agreement established; grievance dismissed. *Re CFTO-TV Limited and National Association of Broadcast Employees and Technicians; Edwards grievance*, February 9, 1976. Brown — 20 pages. (81)*

Termination of employment — employer discretion in hiring temporary employees; grievances dismissed. *Re Molsons Brewery (Ontario) Limited and Brewery Workers, Local 306; Larsen, Mendel grievances*, February 23, 1976. Brown — 16 pages. (82)

Transfer

Compensation provision if transfer resulting in lower salary — not applicable to voluntary training programme; grievance dismissed. *Re Atlas Steels Company and Canadian Steelworkers, Atlas Division; Lapointe grievance*, January 30, 1976. Majority: Brown, Dinsdale — 15 pages; dissent: Simpson. (83)

Travel Allowance

Emergency call-out — grievor entitled to travelling time pay under collective agreement; grievance allowed. *Re Hydro-Electric Commission of the City of Hamilton and International Brotherhood of Electrical Workers, Local 138; Harbridge grievance*, February 16, 1976. Shime, Phelps, Fisher — four pages. (84)

Replacing sick employee does not constitute emergency within meaning of collective agreement; grievance dismissed. *Re Hydro-Electric Commission of the City of Hamilton and International Brotherhood of Electrical Workers, Local 138; Hill, Henderson grievances*, February 16, 1976. Majority: Shime, Phelps — five pages; dissent: Fisher — one page. (85)

Union Officials

Promotion — full-time union official paid by company, refused promotion because he would not be performing work; grievance dismissed. *Re Northern Electric Company Limited and United Automobile Workers* — see (73), *supra*. (86)*

Vacation Pay

Calculation: calculation on percentage basis rather than "regular week" basis — company in violation of agreement and past practice; grievance allowed. *Re Crown Electrical Manufacturing Limited and United Automobile Workers, Local 397; group grievance*, January 12, 1976. Palmer — six pages. (87)

Entitlement — effect of pregnancy leave on calculation method designed to improve scheduling of vacations; clarification of grievor's rights. *Re Falconbridge Nickel Mines Limited and United Steelworkers of America, McDonald grievance*, January 30, 1976. Majority: Linden, Sanderson — seven pages; dissent: LeBel. (88)*

Lay-off on date of calculation — earned benefits not to be reduced; grievance allowed. *Re Sola Basic Limited and International Association of Machinists, Local Lodge 1168; union grievance*, January 7, 1976. Majority: Beck, Wren — seven pages; dissent: Howard — six pages. (89)*

Vacations

Scheduling of vacations — company entitled to consider efficient operation of plant as well as wishes of employees; grievance dismissed. *Re Canadian Hanson Limited and United Steelworkers, Local 14183; Killin grievance*, December 1, 1975. Majority: Hinnegan, Storie — six pages; dissent: Grasso. (90)

Wages

Anti-inflation guidelines: Anti-inflation Tribunal refusing exemption — arbitrator ordering wage increase to be implemented to extent permitted by law. *Re Governing Council of University of Toronto and Canadian Union of Public Employees, Local 1230; policy grievance*, February 16, 1976. Ferguson, Cook, Sack — eight pages. (91)

Rate of pay after reclassification: entitlement to new rate after 12 months in that classification; grievance dismissed. *Re Olympia and York Developments Limited and Canadian Union of Operating Engineers, Local 101; Bennett grievance*, September 25, 1975. Majority: Palmer, Farrar — five pages; dissent: Ticknor. (92)

Rate of pay after reclassification — union failing to establish that higher rate had been agreed to; grievance dismissed. *Re Do-Tan Limited and International Association of Machinists, Local 1740; Nichol grievance*, January 28, 1976. Majority: Rayner, Murray — seven pages; dissent: Tate — three pages. (93)

Rate of pay on transfer — where grievor's seniority would have prevented lay-off; grievance allowed in part. *Re R. Huber and Company (Canada) Limited and International Woodworkers; De Marco underpayment grievance*, January 30, 1976. Majority: Shime, Horan — eight pages; dissent: Hersey — two pages. (94)

Commencement of wage increases — commencement date dependent upon commencement of indicated job classification, not original employment; grievances dismissed. *Re BP Oil Limited and Oil, Chemical and Atomic Workers, Local 9-593; Avery, Palmer grievances*, December 9, 1975. Majority: Brunner, Healy — seven pages; dissent: Edwards — two pages. (95)

Preferential salaries paid to eight employees contrary to agreement — employer entitled to discontinue practice and grant increases per agreement. *Re Corporation of City of London and Canadian Union of Public Employees* — see Vol. 6, 1(48), (50). (96)

Welfare Plans

Amendment of plan subsequent to grievor's termination of employment — grievor entitled only to benefits under collective agreement in force prior to termination of employment; grievance dismissed. *Re 3M Canada Limited and United Automobile Workers, Local 27, Atfield grievance*, January 12, 1976. Weatherill — five pages. (97)

Change in procedure for claiming under group insurance programme — change not violating collective agreement; grievance dismissed. *Re Ferranti-Packard Limited and United Steelworkers, Local 5788; policy grievance*, December 29, 1975. Andrews, Earle, Sharp — six pages; addendum: Sharp — one page. (98)

Reduction of pension benefits because of incorrect reporting of age — reduction proper; grievance dismissed. *Re Proto Tools of Canada Limited and United Automobile Workers, Local 27; Cichy grievance*, January 19, 1976. Adams — eight pages. (99)

Work Assignment

Assignment of work to employees under separate collective agreement with another union — work not exclusively within jurisdiction of grieving union; grievance dismissed. *Re Alcan Canada Products Limited and International Association of Machinists, Lodge 54; policy grievance*, January 14, 1976. Majority: Beatty, Sanderson — ten pages; dissent: Wren — two pages. (100)

Bargaining unit work alleged to be performed by foreman — grievance allowed in part. *Re Ferranti-Packard Limited and United Electrical, Radio and Machine Workers of America, Local 525; policy grievance*, December 8, 1975. Palmer, Thornley, Winkler — nine pages. (101)

Non-bargaining unit employees performing bargaining unit work — inventory work not exclusive to bargaining unit; grievance dismissed. *Re M. Loeb (London) Limited and Teamsters Union, Local 441; group grievance*, January 5, 1975. Shime, McGee, Kobryn — nine pages. (102)

Tradesmen obtaining stores during emergency — not performing work normally done by storekeepers; grievance dismissed. *Re University of Guelph and Canadian Union of Public Employees, Local 1334; policy grievance*, January 12, 1976. Majority: Shime, Sanderson — six pages; dissent: Maddison — two pages. (103)

Work assignment within job classification — seniority irrelevant; grievance dismissed. *Re Windsor Western Hospital Centre Inc., Riverview Unit and Service Employees Union, Local 210; Kersey grievance*, January 8, 1976. Majority: Shime Bartlet — six pages; did not concur: Simko. (104)

The awards may be seen at the offices of the Commission, 400 University Avenue 14th floor, Toronto. Copies of awards may be obtained for a fee of 50 cents per page. Orders will be filled on receipt of an application and a cheque or money order payable to the Treasurer of Ontario for the applicable amount, which should be forwarded to: Cashier's Office, Ministry of Labour, 400 University Avenue, Toronto, Ontario M7A 1V6

Filing Awards

The attention of chairmen of boards of arbitration and sole arbitrators is drawn to the provision of Section 6(2) of the Regulation, which reads: 6.—(2) Every arbitrator shall, within ten days of issuing an award, file a copy thereof with the Commission. This provision would apply to all arbitrators approved under The Ontario Labour-Management Arbitration Commission Act and regardless of whether they were appointed as chairmen or sole arbitrators pursuant to the Act, by the parties or by the Minister.

Mailing List

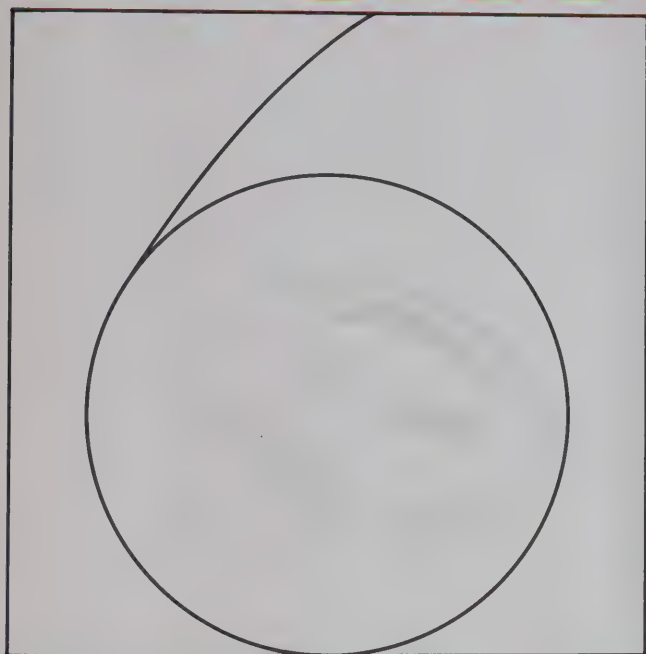
The Commission is preparing a comprehensive mailing list of persons interested in receiving the monthly Bulletin.

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17 Government
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Monthly Bulletin



The Ontario Labour-Management
Arbitration Commission



Ontario

His Honour Judge Walter Little, Chairman
Mary Calarco, Registrar

Ontario Ministry of Labour
400 University Avenue, 14th Floor
Toronto, Ontario
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Hon. Bette Stephenson, M.D., Minister
T. E. Armstrong, QC, Deputy Minister

June, 1976
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Address and Telephone Number Changes

The following changes should be noted:

The telephone number of His Honour Judge J. C. Anderson is changed from (613) 962-9624 to (613) 962-8215.

The address of S. R. Ellis, Esq., is changed from 1267 Queen Street West, Toronto, to 30 Kappele Avenue, Toronto, Ontario M4N 2Z1. He can be reached at the telephone number listed in the May Bulletin, but asks that we add the following number: (416) 667-3466.

Awards

The following awards were filed with the Commission during the month of March, under Section 6(2) of Ontario Regulation 635, R.R.O. 1970.

The summary was prepared at the Faculty of Law, Queen's University, under the supervision of C. G. Simmons, B.A., B.C.L., LL.M., and R. S. Irwin, B.A., LL.M.

*Indicates award to be reported in full or in part in *Labour Arbitration Cases*.

Arbitrability

Agreement providing Promotions Board decision final and binding on both parties — right to grieve appointment taking precedence; grievance arbitrable. *Re Public Utilities Commission, Borough of Scarborough and International Brotherhood of Electrical Workers, Local 636; Lumley grievance*, February 12, 1976. J. L. Roberts, Robinson, Fisher — ten pages; addendum: Robinson — one page. (1)

Collective agreement incorporating statute by reference — interpretation of statute permitted; grievance dismissed. *Re Bata Footwear Division, Bata Industries Limited and Boot and Shoe Workers, Local 715; Seeney grievance*, March 23, 1976. Majority: Swan, Sanderson — 11 pages; dissent: Nokes. (2)*

Jurisdiction to consider new merits after judicial review — award remitted only for purpose of giving effect to

judgment of Court; no jurisdiction to hear new arguments. *Re National Grocers Company Limited and Retail, Wholesale and Department Store Union, Local 414; policy grievance*, March 30, 1976. Majority: Weatherill, B. W. Adams — 11 pages; dissent: Gray — one page. (3)*

Settlement alleged: company granting relief asked for by union; grievance not arbitrable. *Re W. S. Tyler Company of Canada Limited and United Steelworkers, Local 6399; Paul grievance*, February 6, 1976. Brown, Childs, Bates — seven pages. (4)

Termination of sick pay benefits by insurer — policy conforming to collective agreement requirements; grievance not arbitrable. *Re Canada Valve Limited and International Molders and Allied Workers; Bent grievance*, February 16, 1976. Majority: Betcherman, Farrar — six pages; dissent: Wohl — three pages. (5)

Termination: summer student's termination at end of fixed term of employment; grievance procedure not applying — grievance not arbitrable. *Re International Nickel Company of Canada Limited and United Steelworkers; Walters grievance*, February 27, 1976. Majority: Weatherill, Filion — nine pages; dissent: Keck — four pages. (6)

Weekly indemnity benefits — previous arbitration on subject — company estopped from claiming non-arbitrability. *Re Inglis Limited and United Steelworkers; McKinnon grievance*, March 15, 1976. Ferguson — 13 pages. (7)

Grievance before board invalid; proper steps not followed: no jurisdiction to determine merits. *Re UOP Manufacturing Limited, Goodman-Staniforth Division and International Woodworkers; Daoust discharge grievance*, January 30, 1976. Majority: O'Shea, Goloff — 12 pages; dissent: Bedard. (8)

Bereavement Pay

Calculation: no entitlement to overtime pay; premium rates applying only if work performed; grievance dismissed. *Re RCA Limited and International Union of Electrical, Radio and Machine Workers, Local 542; Griffith grievance*, January 14, 1976. Hinnegan, Healy, Pattinson — five pages. (9)

Board of Arbitration

Jurisdiction to grant relief; dispute over wage scales where situation not covered by collective agreement — board having no jurisdiction to grant relief requested. *Re Northern Telephone Limited and Communications Workers of Canada; Sweet grievance*, March 19, 1976. O'Shea, Healy, Mather — 15 pages. (10)

Classification

Creation of new job classification — regular assignment of substantial portion of new tasks resulting in *de facto* establishment of new job classification; grievance allowed. *Re Inmont Canada Limited and International Chemical Workers, Local 612; union grievance*, March 26, 1976. Weatherill — eight pages. (11)

Reclassification of job duties: no alteration in duties being performed — arbitrary reclassification with resulting loss of pay in violation of collective agreement; grievances allowed, compensation awarded. *Re Toronto General Hospital and Nurses' Association; Crane et al grievances*, March 1, 1976. Majority: Weatherill, Walsh — 15 pages; dissent: Clark — four pages. (12)

Work performed manually not within intended scope of new classification relating to anticipated mechanization of job function; grievance dismissed. *Re Domtar Construction Materials Limited, Arborite Division and United Electrical, Radio and Machine Workers, Local 561; union grievance*, March 24, 1976. Schiff, Byers, Tate — four pages; addendum: Tate — one page. (13)

Contracting Out

Subcontracting of work because equipment not operable; no restriction in collective agreement; grievance allowed in part. *Re Concrete Construction Supplies of Windsor Limited and Teamsters, Local 880; Seguin grievance*, February 16, 1976. Stewart, Marentette, Kobryn — nine pages. (14)

Work contracted out to non-bargaining unit personnel — no prohibition in collective agreement; grievance dismissed. *Re Eaton Yale Limited, Forestry Equipment Division and International Molders and Allied Workers; anonymous grievor*, March 16, 1976. Shime — four pages. (15)*

Collective Agreement

Memorandum of Settlement later incorporated into collective agreement — taking immediate effect; preliminary objection dismissed. *Re Alcan Canada Foils and Printing Specialties and Paper Products Union, Local 466; union grievance*, March 25, 1976. Schiff — 17 pages; partial dissent: Paulin — five pages; partial dissent: Tate — three pages. (16)*

Verbal agreement alleged; whether forming part of collective agreement; no jurisdiction to find breach of collective agreement. *Re Brewers' Warehousing Company Limited and United Brewers' Warehousing Workers Provincial Board; union grievance*, March 5, 1976. Palmer — 19 pages. (17)*

Withdrawal of free coffee by employer; existing benefit protected by first collective agreement not to be altered to discriminate against employees; grievance allowed. *Re Ontario Educational Communications Authority and National Association of Broadcast Employees and Technicians, Local 72; union grievance*, March 11, 1976. Brent — 11 pages. (18)*

Damages

Calculation of damages where work assigned outside bargaining unit — determination of actual loss. *Re Corporation of the Borough of Scarborough and Scarborough Civic Employees, Local 368; union grievance*, February 27, 1976. Supplementary majority award: Adams, Wren — five pages; dissent: Sanderson — one page. See also Vol. 5, 9 (72). (19)

Union liability for illegal work stoppage — company claim for damages denied. *Re Domtar Packaging Company Limited and International Chemical Workers, Local 595; company grievance*, March 3, 1976. Majority: Rayner, Simon — 13 pages; dissent: Byers. (20)

Discharge

Absent because of illness but working for another employer — employee not informed that previous reinstatement was conditional; grievor reinstated without compensation. *Re Massey-Ferguson Industries Limited and United Automobile Workers, Local 458; Campbell grievance*, March 5, 1976. Simmons — 11 pages. (21)

Breach of procedures and conspiracy to steal; employer failing to justify discharge; reinstatement with compensation. *Re Tailsman Motor Inn and Hotels, Clubs, et al Employees, Local 261; Sauve et al grievances*, March 15, 1976. Curtis, Cook, Bishop — four pages. (22)

Concealment of high demerit-point total on driver's licence — inability of grievor to determine point total; no obligation to volunteer total; reinstatement with compensation ordered. *Re Capital Coach Lines Limited and Canadian Brotherhood of Railway, Transport and General Workers; McConnell grievance*, March 3, 1976. Final majority award: Abbott, Wynter — 18 pages; dissent: Wait — two pages. See also Vol. 5, 1 (21); 5, 4 (3). (23)

Concealment of information on application failing to disclose material aspect of physical condition; grievance dismissed. *Re Babcock and Wilcox Canada Limited and United Steelworkers, Local 2859; Boutelier grievance*, March 25, 1976. Majority: Brown, Wakely — 24 pages; dissent: Reeds. (24)

Consumption of alcohol before going on duty — suspension without pay substituted. *Re Custom Concrete Limited and Teamsters, Local 230; Thomas grievance*, February 26, 1976. Majority: McCulloch, Beaulieu — 18 pages; dissent: O'Neil — four pages. (25)

Culminating incident: attempt to instigate a work stoppage; discharge justified. *Re Steel Company of Canada Limited and United Steelworkers, Local 1005; Petrie grievance*, March 10, 1976. Majority: Brandt, Sanderson — 35 pages; dissent: Valentine. (26)

Culminating incident: deliberately failing to punch time card when leaving plant; discharge justified. *Re Wimco Steel Sales Company Limited and United Steelworkers; Campbell grievance*, February 2, 1976. Majority: O'Shea, Farrar — nine pages; dissent: Mayne — two pages. (27)

Culminating incident: discourteous and rude conduct toward employer's customer; discharge justified. *Re Brink's Canada Limited and Teamsters, Local 879; Schaefer grievance*, February 12, 1976. Majority: Hinnegan, Stringer — eight pages; dissent: Hurd — three pages. (28)

Culminating incident: incident itself not warranting discipline; reinstatement with compensation. *Re St. Mary's General Hospital and London and District Building Service Workers, Local 220; Schwartzentruber grievance*, February 9, 1976. Majority: Palmer, Walsh — five pages; dissent: Cook — four pages. (29)

Culminating incident — insubordination: failure to obey a reasonable order; discharge justified. *Re Corporation of the City of Windsor and Windsor Municipal Employees, Local 543; Annett grievance*, February 25, 1976. Majority: Hinnegan, Burnell — ten pages; dissent: Moynahan — one pages. (30)

Falsification of pre-employment application — discharge justified. *Re Capital Coach Lines Company Limited and Canadian Brotherhood of Railway, Transport and General Workers; Graham grievance*, March 10, 1976. Majority: Abbott, Wait — 18 pages; dissent: Wynter — seven pages. See also Vol. 5, 1 (21); 5, 4 (3). (31)

Falsification of production time tickets: double jeopardy claimed where suspension followed by discharge; grievance dismissed. *Re Borg-Warner (Canada) Limited, Long Manufacturing Division and United Automobile Workers, Local 1256; Greco grievance*, March 5, 1976. Hinnegan — 11 pages. (32)*

Fighting: violent altercation — grievors failing to establish discharge unreasonable; grievances dismissed. *Re Burlington Steel, Division of Slater Steel Industries Limited and United Steelworkers, Local 4752; Sharma, Genuardi grievances*, March 18, 1976. Brown — 26 pages. (33)

Insubordination and poor attitude alleged — discharge not justified; reinstatement ordered. *Re Labatt's Limited and Brewery Workers, Local 304; Schmidz grievance*, March 16, 1976. Weatherill — nine pages. (34)

Insubordination: use of abusive language and physical assault on supervisor; discharge justified. *Re Chrysler Canada Limited and United Automobile Workers, Local 1285; Din grievance*, March 24, 1976. O'Shea — 12 pages. (35)

Onus of proof on employer to justify discharge — equally credible witnesses giving conflicting evidence; grievor failing to mitigate — grievance allowed without compensation. *Re Board of Park Management, City of Brantford and Brantford Civic Employees, Local 181 CUPE; anonymous grievor*, March 9, 1976. Shime, Winkler, Acton — four pages. (36)

Rude, insulting and intoxicated in a public place — discharge unjustified; five-month suspension without pay substituted. *Re Charterways Limited and Charterways Full Time Drivers' Association; MacDonald grievance*, March 15, 1976. Majority: Brandt, Davis — 19 pages; dissent: Davies. (37)

Theft of company property: grievor accepting cash discounts from company suppliers without informing company; grievance dismissed. *Re Decor Metal Products Limited and United Automobile Workers, Local 1411; Dicks grievance*, March 2, 1976. Weatherill — seven pages. (38)

Theft of company property — no proof property belonged to company; grievance allowed. *Re United Asbestos Incorporated and United Steelworkers, Local 8308; Smith grievance*, March , 1976. Majority: Abbott, Farrell — 17 pages; dissent: Osborne — 13 pages. (39)

Theft — substitution of lesser penalty; suspension substituted for discharge. *Re Campeau Corporation (Harbour Castle Hotel) and Hotel and Club Employees, Local 299; Khubyar grievance*, March 12, 1976. Burkett — nine pages. (40)

Unsatisfactory work performance — discharge not justified; suspension substituted. *Re Toronto Northwestern General Hospital and Civil Service Association of Ontario; Jones grievance*, February 19, 1976. Majority: Gorsky, D. Anderson — nine pages; dissent: Norman — one page. (41)

Discipline

Assault on foreman — grievor's misbehaviour not as serious as alleged; step two reminder substituted for step four reminder. *Re International Nickel Company of Canada Limited and United Steelworkers; Renaud grievance*,

March 2, 1976. Majority: Gorsky, Keck — 15 pages; dissent: Sanderson — one page; addendum: Gorsky — one page. (42)

Engaging in illegal strike: suspension equal to time not worked — penalty appropriate; grievances dismissed. *Re Domtar Packaging Company Limited and International Chemical Workers, Local 595; Union Executive grievance*, March 3, 1976. Majority: Rayner, Simon — ten pages; dissent: Byers. (43)

Engaging in union activities during work hours: unreasonable refusal of permission to use telephone in exceptional circumstances; suspension removed. compensation ordered. *Re UOP Manufacturing Limited, Goodman-Staniforth Division and International Woodworkers; Daoust suspension grievance*, January 21, 1976. Majority: O'Shea, Bedard — 12 pages; dissent: Goloff. (44)

Error in nursing judgment — notice substituted for two-day suspension. *Re Corporation of the City of Windsor and Windsor Municipal Employees, Local 543; Kahraman grievance*, February 25, 1976. Hinnegan, Burnell, Moynahan — ten pages. (45)

Failure to call in sick — grievor establishing inability due to illness; grievance allowed. *Re Corporation of the Borough of Scarborough and Scarborough Civic Employees, Local 368, CUPE; Taylor grievance*, March 8, 1976. Weatherill — six pages. (46)

Fighting on company premises — fourth step reprimand justified; grievance dismissed. *Re International Nickel Company of Canada Limited and United Steelworkers; Williams grievance*, March 12, 1976. Majority: Hinnegan, Winkler — five pages; dissent: Falkowski. (47)

Insubordination: alleged intoxication while on duty — ability not impaired; grievance allowed with compensation. *Re Chrysler Canada Limited and Canadian Union of Operating Engineers, Local 102; English grievance*, March 17, 1976. O'Shea — 16 pages. (48)

Insubordination: behaviour toward supervisor — no just cause for suspension; suspension removed and compensation ordered. *Re Scherer — G. C. Limited and Canadian Food and Allied Workers, Local 175; Lesperance grievance*, March 12, 1976. O'Shea — 17 pages. (49)*

Insubordination: failure to follow instructions; suspension justified. *Re International Nickel Company of Canada Limited and United Steelworkers; Demore grievance*, March 17, 1976. Majority: Brown, Clark — 21 pages; dissent: Burrows — two pages. (50)

Insubordination: refusing to perform duties due to unsafe working conditions; grievances dismissed. *Re Union Carbide Canada Limited and United Electrical, Radio and Machine Workers, Local 523; Tisi, Holman grievances*, March 11, 1976. Majority: Curtis, Orsini — 15 pages; dissent: Wright — two pages. (51)

Insubordination: refusing to work overtime — agreement not specifying whether mandatory overtime may be scheduled on same day as regular shift worked; grievance dismissed. *Re Noranda Metal Industries Limited (Fergus Division) and International Brotherhood of Electrical Workers, Local 2345; Forster grievance*, March 9, 1976. Majority: Andrews, Drmaj — nine pages; dissent: Fisher. (52)

Personal appearance regulations concerning beards — whether rule unreasonable in light of grievor's duties and changing public attitudes; suspension removed — compensation ordered. *Re Dominion Stores Limited and United Steelworkers; Ridley grievance*, March 3, 1976. Shime — 13 pages. (53)*

Possession of alcoholic beverages on company premises — company failing to establish on balance of probabilities the identity of the offender; grievance allowed with compensation. *Re Kanmet Limited and International Molders and Allied Workers, Local 194; Robichaud grievance*, February 20, 1976. Majority: Betcherman, Wohl — eight pages; dissent: Gilmore — six pages. (54)

Refusal to complete overtime assignment; suspension justified. *Re ITT Canada Limited and United Steelworkers, Local 6340; Weeks grievance*, March 15, 1976. Majority: Brown, Stringer — nine pages; dissent: Childs. (55)

Union executive participating in illegal strike — more severe discipline imposed; suspension removed without compensation. *Re Domtar Packaging Company Limited and International Chemical Workers, Local 595; group grievances*, March 3, 1976. Majority: Rayner, Simon — nine pages; dissent: Byers. (56)

Unsatisfactory work performance — written warning substituted for two-day suspension. *Re Bristol-Myers Products Canada Limited and International Chemical Workers, Local 302; Fraser grievance*, March 15, 1976. Majority: Brown, Phalen — 11 pages; partial dissent: Filion — two pages. (57)

Work stoppage — excessive heat alleged; no danger to health — suspension justified. *Re Goodyear Tire and Rubber Company of Canada Limited and United Rubber Workers, Local 232; Connelly et al grievances*, February 23, 1976. Majority: Betcherman, Sanderson — ten pages; dissent: Tate — nine pages. (58)

Estoppel

Non-bargaining unit personnel assigned work — common past practice; grievance dismissed. *Re Eaton Yale Limited, Forestry Equipment Division and International Molders and Allied Workers* — see (15), *supra*. (59)*

Oral agreement alleged: where no obligation in collective agreement estoppel may not be argued as independent basis of obligation; grievance dismissed. *Re Brewers' Warehousing Company Limited and United Brewers' Warehousing Workers Provincial Board* — see (17), *supra*. (60)*

Previous arbitration estopping company from denying arbitrability of present grievance; grievance arbitrable. *Re Inglis Limited and United Steelworkers* — see (7), *supra*. (61)

Union representative approving reduction in weekly guarantee — union official having no actual nor ostensible authority; grievance allowed. *Re Canada Packers Limited and Canadian Food and Allied Workers, Local P1105; Brebner grievance*, March 15, 1976. Majority: Weatherill, Walsh — 17 pages; dissent: Williamson — five pages. (62)*

Grievance Procedure

Group grievance — previous award of compensation applying only to those grievors specifically named in grievance; previous award fully implemented. *Re Budd Automotive Company of Canada Limited and United Automobile Workers, Local 1451; Kular et al grievances*, March 25, 1976. O'Shea — ten pages. (63)

Timeliness for proceeding on other grounds for discharge — time limits mandatory; discharge on grounds raised after time limit had elapsed. *Re Capital Coach Mines Company Limited and Canadian Brotherhood of Railway, Transport and General Workers* — see (23), *supra*. (64)

Health Services Insurance

OHIP premiums paid by employer — employee having exhausted sick leave credits and receiving only workmen's compensation: whether employer obliged to continue payment of premiums; grievance dismissed. *Re Corporation of City of Toronto and Canadian Union of Public Employees, Local 43; Sweet grievance*, March 4, 1976. Majority: Kruger, Paulin — eight pages; dissent: Tage — six pages. (65)*

Holiday Pay

Qualifying days: failure to report for shift next following holiday — grievor failing to establish good cause arising from circumstances beyond his control; grievance dismissed. *Re Canada Packers Limited and Canadian Food and Allied Workers; Misevicius grievance*, February 26, 1976. Majority: McIver, Williamson — five pages; dissent: Beaulieu — one page. (66)

Rate of pay for day of holiday — grievor not scheduled to work — higher-rated job available; grievance dismissed. *Re International Nickel Company of Canada Limited and United Steelworkers; St. Denis grievance*, February 26, 1976. Majority: Brown, Filion — seven pages; dissent: McVey. (67)

Job Posting

Requirement to post: lateral transfers within classification providing "promotional opportunities" requiring posting; grievance allowed. *Re Corporation of the Borough of Scarborough and Nurses' Association Scarborough Health Department; group grievance*, February 11, 1976. Brandt, Walsh, Sanderson — 11 pages. (68)

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Bumping — seniority applying where grievors have qualifications to do job; grievances allowed. *Re Canadian Trailmobile Limited and United Automobile Workers, Local 397; Anderson, Macaskill grievances*, February 20, 1976. Ord — 11 pages. (69)

Notice of lay-off provisions not applying to workers not recalled immediately after end of strike: whether striking employees laid off; grievance dismissed. *Re Alcan Canada Foils and Printing Specialties and Paper Products Union* — see (16), *supra*. (70)*

Overtime scheduled during lay-off — employees to be recalled before scheduling of overtime if reasonably possible; grievance allowed. *Re Ford Motor Company of Canada Limited and United Automobile Workers, Local 1520; union grievance*, March 3, 1976. Palmer — nine pages. (71)

Seniority — company not allowing familiarization period for job transfer in lay-off situation; grievance partially allowed with compensation. *Re Barber-Ellis of Canada Limited and United Automobile Workers, Local 397; Walker grievance*, February 27, 1976. O'Shea — 16 pages. (72)

Leave of Absence

Sickness — employees had right to be absent; no need to grant leave of absence; grievance allowed. *Re National Grocers Company Limited and Retail, Wholesale and Department Store Union* — see (3), *supra*. (73)*

Overtime

Equalization pay — period of comparison with other employees extended beyond preceding year to include time when most overtime worked; grievance allowed. *Re Standard Tube Canada Limited and United Automobile Workers, Local 636; Stoodley grievance*, March 24, 1976. Weatherill — six pages. (74)

Discipline: refusal to work overtime; agreement providing for some mandatory overtime but not specifying whether on same day as regular shift worked; grievance dismissed. *Re Noranda Metal Industries Limited (Fergus Division) and International Brotherhood of Electrical Workers* — see (52), *supra*. (75)

Mandatory overtime: employee obligation to perform overtime work unless sufficient excuse for refusal given — scheduling of overtime when reasonably required; grievance dismissed. *Re Dominion Chain Company and International Association of Machinists; union grievance*, March 15, 1976. Shime, McKillop, Hamilton — ten pages. (76)

Procedure

Request for adjournment refused; unavailability of witness within control of company. *Re Scherer — G. C. Limited and Canadian Food and Allied Workers* — see (49), *supra*. (77)

Promotion

Qualifications for promotion — seniority provisions not applicable where grievor not qualified; grievance dismissed. *Re Cummins Ontario Limited and United Steelworkers, Local 5390; McMillan grievance*, March 15, 1976. Majority: Weatherill, Morley — eight pages; dissent: Urbanivics. (78)

Recall

Seniority: employees declining to do inventory work — whether seniority provisions apply for recall where production work required during inventory period; grievances dismissed. *Re Bendix Automotive of Canada Limited and United Automobile Workers, Local 195; group grievance*, March 23, 1976. Gorsky — six pages. (79)

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Work loss due to change in schedule — employer failing to notify grievor while on vacation; grievance allowed,

compensation awarded. *Re Atlas Steels Company and Canadian Steelworkers Union; Deschenes grievance*, February 27, 1976. Majority: Brown, Simpson — nine pages; dissent: Robinson — one page. (80)

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Entitlement — responsibility pay accruing only by job description; employee unofficially accepting extra responsibility — grievances dismissed. *Re Scarborough General Hospital and Ontario Nurses' Association, Local 111; Hall et al grievances*, February 17, 1976. Majority: Ord, Riggs — six pages; dissent: Willis — one page. (81)

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Calculation of pay on retirement — hourly rate to be used. *Re Corporation of Borough of Scarborough and Scarborough Professional Fire Fighters' Association, Local 626; Dalby grievance*, March 23, 1976. Shime — six pages. (82)

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Alteration of work schedule to a four-day week: lay-off alleged — isolated exercise of right to schedule reduced work; grievance dismissed. *Re E. S. & A. Robinson (Canada) Limited and Printing Specialties and Paper Products Union, Local 466; policy grievance*, February 6, 1976. Majority: Swan, Pyle — 17 pages; dissent: Tate — four pages. (83)*

Seniority

Lay-off — qualifications for transfer: senior employee not entitled to bump junior employee in lower classification unless able to meet normal requirements of job; grievance dismissed. *Re Eaton Yale Limited, Forestry Equipment Division and International Molders and Allied Workers; Baese grievance*, March 16, 1976. Shime — six pages. (84)

Loss of seniority — absence without satisfactory reasons: discharge following loss of seniority not requiring just cause; grievance dismissed. *Re Ford Motor Company of Canada Limited and United Automobile Workers, Local 707; Roach grievance*, March 2, 1976. Palmer — five pages. (85)*

Qualifications for promotion — grievor less qualified; grievance dismissed. *Re Public Utilities Commission of Borough of Scarborough and International Brotherhood of Electrical Workers* — see (1), *supra*. (86)

Qualifications for promotion — relative equality of applicants; grievance dismissed. *Re Temiskaming Hospitals and Canadian Union of Public Employees, Local 904; anonymous grievor*, February 25, 1976. Lunney, Warren, Belanger — 12 pages. (87)

Temporary work assignment — company not properly assessing grievor's priority; grievance allowed. *Re Dominion Stores Limited and United Steelworkers, Local 14045; Fox grievance*, March 5, 1976. Ferguson — ten pages. (88)

Temporary work assignment during reduction of work force without regard to seniority; recall procedure not applying; grievance dismissed. *Re Gould Manufacturing of Canada Limited and International Association of Machinists, Lodge 1975; Koyle grievance*, March 12, 1976. Majority: Ferguson, Sargeant — seven pages; dissent: Wren. (89)

Training of junior employees — no seniority provision applying to selection for training; grievance dismissed. *Re Municipality of Metropolitan Toronto and Canadian Union of Public Employees, Local 43; Wilson grievance*, March 8, 1976. Majority: O'Shea, Sargeant — 15 pages; dissent: Tate — three pages. (90)

Strike

Responsibility of union in an illegal strike — union failing to make significant effort to prevent strike and tacitly approving employee action; grievance allowed. *Re General Bakeries Limited and Bakery and Confectionery Workers, Local 264; company grievance*, March 1, 1976. Shime, McGowan, Reid — nine pages. (91)

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Termination: grievance procedure not applying to termination of summer student's employment at end of fixed term; grievance not arbitrable. *Re International Nickel Company of Canada Limited and United Steelworkers* — see (6), *supra*. (92)

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Discharge of assistant chief steward — discharge not based on grievor's union position; grievor's actions alone warranting penalty; grievance dismissed. *Re Steel Company of Canada Limited and United Steelworkers* — see (26), *supra*. (93)

Engaging in union activities during working hours: collective agreement providing for time off with pay — exceptional circumstances not justifying discipline; suspension removed, compensation ordered. *Re UOP Manufacturing Limited and International Woodworkers* — see (44), *supra*. (95)

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Request of company to meet with enlarged grievance committee — company in violation of agreement; grievance allowed. *Re Hiram Walker and Sons Limited and Canadian Union of Distillery Workers, Local 1; policy grievance*, March 5, 1976. McCulloch — 26 pages. (96)

Vacation Pay

Calculation based on previous year's gross annual earnings — whether previous year's vacation pay to be included; grievance allowed. *Re Canada-Ferro Company Limited and United Automobile Workers, Local 1285; Nichols grievance*, March 29, 1976. Weatherill — nine pages. (97)

Calculation where new collective agreement increasing rate — new rate applying to part of vacation year preceding implementation of agreement; grievances allowed. *Re Armbrro Transport Limited and Teamsters, Local 938; Nicholls et al grievances*, February 27, 1976. Majority: Weatherill, Goudge — eight pages; dissent: Walker — two pages. (98)

Entitlement — provisions for increased vacation pay in new collective agreement not retroactive; grievance dismissed. *Re Abex Industries Limited and International Chemical Workers, Local 175; union grievance*, March 3, 1976. Majority: O'Shea, Pogson — ten pages; dissent: Ladd. (99)

Wages

Entitlement to increases: six-month qualifying period fulfilled by grievor — grievor entitled to higher step rate. *Re Northern Telephone Limited and Communications Workers of Canada* — see (10), *supra*. (100)

Payment to new employee at rate higher than provided in wage schedules — company in violation of agreement; grievance allowed. *Re Torin Manufacturing (Canada) Limited and United Automobile Workers, Local 1256; policy grievance*, March 26, 1976. Hinnegan — four pages. (101)

Temporary transfer to lower-rated job — collective agreement requiring regular wage unless employee laid off; grievance allowed. *Re Wabi Iron Works Limited and United Steelworkers; Scully grievance*, February 27, 1976. Majority: Ferguson, Keuhl — seven pages; dissent: McDermott — three pages. (102)

Wages alleged below minimum — *The Employment Standards Act* incorporated into agreement and can be interpreted by arbitrator — no violation of collective agreement; grievance dismissed. *Re Bata Footwear and Boot and Shoe Workers* — see (2), *supra*. (103)*

Work Assignment

Assignment by seniority; procedure not followed — company not establishing valid exception to general rule; grievance allowed. *Re Municipal Tank Lines Limited and Canadian Tank Lines Union; Boyer grievance*, February 18, 1976. Majority: Curtis, Posen — 12 pages; dissent: Madigan — 13 pages. (104)

Bargaining unit work alleged to be performed by non-union members — union claiming exclusive jurisdiction over all work performed; grievance allowed in part. *Re Canadian Broadcasting Corporation and Canadian Wire Service Guild, Local 213; policy grievance*, February 12, 1976. Majority: Stewart, Healy — 25 pages; dissent: Cosgrove — 16 pages (105)*

Suppliers' representatives performing routine manual store work — no violation of collective agreement; grievance dismissed. *Re Dominion Stores Limited and Retail, Wholesale and Department Store Union, Local 414; Lovie grievance*, March 12, 1976. Majority: O'Shea, White — ten pages; dissent: Reekie. (106)

Transfer of work to employees in another bargaining unit — no violation of collective agreement; grievance dismissed. *Re Hydro Electric Commission of Sudbury and Canadian Union of Public Employees, Locals 138, 1052; union grievance*, March 12, 1976. Majority: O'Connor, Clark — 18 pages; dissent: McVey. (107)

Work Conditions

Increase in line speed in violation of collective agreement; grievance allowed without compensation; declaration of breach of agreement and return to previous speed ordered. *Re GSW Appliances Limited and GSW Home Service Limited and United Steelworkers, Local 3129; union grievance*, March 10, 1976. Final award: Shime — ten pages. See also Vol. 5, 5 (5). (108)

Requirement to maintain stable and regular staff — no violation of agreement; grievance dismissed. *Re Brewers' Warehousing Company Limited and United Brewers' Warehousing Workers Provincial Board* — see (17), *supra*. (109)*

The awards may be seen at the offices of the Commission, 400 University Avenue 14th floor, Toronto. Copies of awards may be obtained for a fee of 50 cents per page. Orders will be filled on receipt of an application and a cheque or money order payable to the Treasurer of Ontario for the applicable amount, which should be forwarded to: Cashier's Office, Ministry of Labour, 400 University Avenue, Toronto, Ontario M7A 1V6

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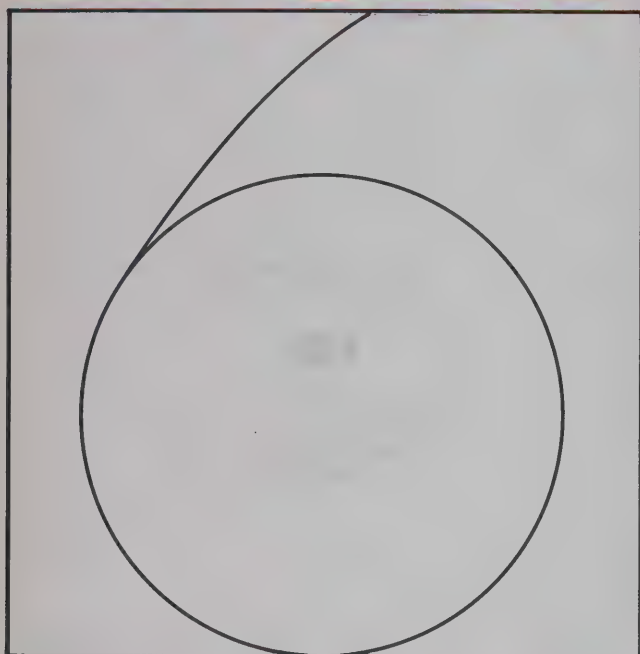
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Monthly Bulletin



The Ontario Labour-Management
Arbitration Commission



His Honour Judge Walter Little, Chairman
Mary Calarco, Registrar

Ontario Ministry of Labour
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Hon. Bette Stephenson, M.D., Minister
T. E. Armstrong, QC, Deputy Minister

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Awards

The following awards were filed with the Commission during the month of April, under Section 6(2) of Ontario Regulation 635, R.R.O. 1970.

The summary was prepared at the Faculty of Law, Queen's University, under the supervision of C.G. Simmons, B.A., B.C.L., LL.M., and R.S. Irwin, B.A., LL.M.

* Indicates award to be reported in full or in part in *Labour Arbitration Cases*.

Arbitrability

Grievance concerning discharge of probationary employee — not arbitrable under collective agreement; grievance dismissed. *Re Catholic Children's Aid Society of Metropolitan Toronto and Federation of Children's Aid Staffs; Downham grievance*, February 27, 1976. Majority: Brown, Churchill-Smith — 18 pages; dissent: Lyons — five pages. (1)

Signatories of collective agreement — international union not bound because it did not sign agreement; grievance proceedings against international union terminated. *Re Dryden Paper Company Limited and United Paperworkers Union and Locals 105, 1323; company grievances*, March 31, 1976. Majority: Brown, Koskie — 16 pages; dissent: Dinsdale — six pages. (2)*

Bargaining Unit

Exclusion of clerks — no change in job duties not collective agreement since union agreed to exclusion; grievance dismissed. *Re Eaton Yale Limited, Forestry Equipment Division and International Molders and Allied Workers; policy grievance*, March 16, 1976. Shime — five pages. (3)

Bereavement Leave

Further proof required by employer not supplied until arbitration — entitlement to leave is only issue at arbitration; grievance allowed. *Re Canada Valve Limited and International Molders and Allied Workers, Chaban grievance*, April 7, 1976. Majority: Ferguson, Wohl — eight pages; addendum: Wohl — one page; dissent: Farrar — two pages. (4)

Classification

Compensation — lead hand duties improperly assigned to employees in other grades — grievor entitled only to be paid premium for hours worked by other employees during week of incident complained of. *Re Spar Aerospace Products Limited and United Automobile Workers, Local 112; Notaras grievance*, April 13, 1976. Supplementary award: Brown — seven pages. See also Vol. 6,1(52). (5)

Dual rating applicable because functions performed falling within two job descriptions — practice consistent with collective agreement; grievance dismissed. *Re International Harvester Company of Canada Limited and United Steelworkers, Local 2868; Gate grievance*, March 2, 1976. Majority: O'Shea, Stringer — nine pages; dissent: Young. (6)

Improper classification alleged — duties not within higher classification — company classification proper; grievance dismissed. *Re Adams Furniture Store and Retail Clerks Union, Local 206; anonymous grievor*, April 22, 1976. Shime — six pages. (7)

New job — improper classification alleged — union failing to establish that job within higher classification; grievance dismissed. *Re W.S. Tyler Company of Canada Limited and United Steelworkers, Local 6399; union grievance*, April 8, 1976. Shime, Bates, Young — five pages. (8)

Probationary employee — employee who had completed probationary period transferred to job requiring statutory training period — probationary classification justified; grievance denied. *Re Union Gas Company of Canada Limited and Oil, Chemical and Atomic Workers, Local 9-14; Miller grievance*, March 31, 1976. Majority: Brown, Riggs — 15 pages; dissent: Punnett — two pages. (9)

Job content — onus on grievor to establish performance of duties of higher-rated classification; onus not discharged — grievance dismissed. *Re Beacon Hill Lodges of Canada Limited & Service Employees, Local 210; Durocher grievance*, March 15, 1976. Majority: Brown, Bartlet — 18 pages; dissent: Simko — two pages. (10)

Demotion

Discipline for theft — trustworthiness one requirement of job; grievance dismissed. *Re Consumers Glass Company Limited and United Glass and Ceramic Workers, Local 200; Briffa grievance*, April 14, 1976. Abbott, Gray, Ortlieb — 13 pages. (11)*

Non-disciplinary demotion — grievor returning to lower classification after illness — employer entitled to require medical proof of fitness to return to higher classification; grievance dismissed. *Re International Nickel Company of Canada Limited and United Steelworkers of America; Brunet grievance*, March 2, 1976. Majority: Palmer, Sanderson — seven pages; dissent: Rouleau. (12)

Non-disciplinary demotion — junior employee retained; seniority not only factor — employer acted in good faith; no breach of collective agreement; grievance dismissed. *Re Hydro Electric Power Commission of Ontario and Office and Professional Employees International Union; Huffman-Moore grievance*, April 8, 1976. Majority: Simmons, Robinson — 12 pages; dissent: Simon — one page. (13)*

Unsatisfactory work performance — non-disciplinary demotion justified; grievance dismissed. *Re International Nickel Company of Canada Limited and United Steelworkers of America; Martin grievance*, March 19, 1976. Majority: Hinnegan, Sanderson — eight pages; dissent: Thomson — three pages. (14)

Discharge

Alleged persistent neglect of duties — failure by employer to initiate progressive discipline procedure — dismissal upheld on evidence that faulty procedures were unlikely to alter ultimate result. *Re Ryerson Polytechnical Institute and Ryerson Faculty Association; Smith grievance*, March 31, 1976. Simmons — 58 pages. (15)*

Compensation — grievor unable to fulfil conditions of medical fitness for reinstatement — compensation for wage loss limited to reasonable period for determination of medical condition. *Re Wimco Steel Sales Company Limited and United Steelworkers, Local 6275; Krieger grievance*, April 6, 1976. Supplementary award: Ferguson — seven pages; dissent: Farrar — seven pages; dissent: Murray — two pages. See also Vol. 5,9(25) (16)

Criminal conviction — more serious charges withdrawn; conviction for being drunk and disorderly not just cause for discharge; grievance allowed. *Re Fiberglas Canada Limited and Oil, Chemical and Atomic Workers, Local 9-14; McGraw grievance*, April 9, 1976. Palmer — ten pages. (17)*

Culminating incident: excessive absenteeism and tardiness — discharge justified; grievance dismissed. *Re R.J. Simpson Manufacturing Company (Canada) Limited and United Automobile Workers, Local 1738; Welch grievance*, April 14, 1976. Hinnegan — four pages. (18)

Failure to report following lay-off alleged — onus on grievor to establish status as employee; employee used leave of absence for improper purposes — quit found; grievance dismissed. *Re Acme Steel Company of Canada Limited and United Steelworkers, Local 6572; Fyffe grievance*, April 20, 1976. Majority: Dunn, Middleton — six pages; dissent: Martin — three pages. (19)

Quit alleged — grievor's conduct not warranting reinstatement; grievance dismissed. *Re Ralph Milrod Metal Products Limited and International Association of Machinists; Small grievance*, February 2, 1976. Majority: Ord, McKillop — nine pages; dissent: Wren — three pages. (20)

Harassment of fellow employee — discharge not justified due to employer's conduct; reinstatement without compensation substituted. *Re Nipissing Area Joint Hospitals Laundry Incorporated and Service Employees Union, Local 478; Watkins grievance*, March 10, 1976. Ferguson, Lister, Dodge — seven pages. (21)

Inability to perform all aspects of job known to employer on hiring — subsequent decision to discharge for inability reasonable; grievance dismissed. *Re Crown Steel Products Limited and Sheet Metal Workers' International Association, Local 30; Truhly grievance*, March 30, 1976. O'Shea, Kobryn, Murray — ten pages. (22)

Insubordination: refusal to accept work assignment where issue of professional judgment involved — discharge justified. *Re Seneca College and Civil Service Association of Ontario (Inc.); Wills grievance*, April 28, 1976. Majority: Weatherill, Henley — 13 pages; dissent: Dignam — five pages. (23)*

Reinstatement conditional upon medical certificate of fitness — medical specialist attaching qualifications to certification required; grievor unable to meet precise conditions for reinstatement — grievance dismissed. *Re Custom Concrete Limited and Teamsters, Local 230; Rioual grievance*, April 9, 1976. Majority: Ferguson, Bradley — six pages; dissent, with appendix: Beaulieu — seven pages. See also Vol. 5,5(15). (24)

Tardiness and insubordination — discharge justified by employee's record; grievance dismissed. *Re Canadian Lukens Limited and United Steelworkers of America; Campbell grievance*, April 8, 1976. Schiff — 11 pages. (25)

Theft from a customer — discharge warranted; grievance dismissed. *Re Lord Simcoe Hotel Limited and Hotel and Club Employees' Union, Local 299; Begos grievance*, April 5, 1976. Majority: Dunn, Phelps — three pages; dissent: Tate — two pages. (26)

Unsatisfactory work performance; grievor failing to carry out job duties in competent manner — discharge unjustified; reinstatement without compensation substituted. *Re Retail, Wholesale and Department Store Union, Local 414 (employer) and Office & Professional Employees International Union, Local 343; Johnson grievance*, April 2, 1976. Adams — 29 pages. (27)

Grievor's work skills no longer required — no evidence of disciplinary motive for termination; grievance dismissed. *Re Comstock International Limited and United Association of Journeymen and Apprentices (Plumbers), Local 800; Playford grievance*, April 15, 1976. Majority: Lunney, Lang — five pages; dissent: D. Stewart — one page. (28)

Culminating incident: absence from work without permission — discharge justified, grievance dismissed. *Re Quebec North Shore and Labrador Railway Company and Brotherhood of Railway Signalmen; Blundon, Evans grievances*, April 26, 1976. Majority: Weatherill, Bazin — nine pages; dissent: Stockdale — one page. (29)

Discipline

Falsification of delivery record alleged — no dishonesty proved; written warning substituted for five-day suspension. *Re General Wire and Cable Limited and United Steelworkers of America; McKnight grievance*, April 26, 1976. Brown — 13 pages. (30)

Illegal strike — grievors (union executives) ordered, counselled, encouraged and participated in illegal work stoppage and picketing; suspension justified. *Re Hiram Walker and Sons Limited and Canadian Union of Distillery Workers, Local 1; Tighe et al grievances*, March 22, 1976. Stewart — 61 pages. (31)*

Insubordination alleged — no direct order given — refusal of grievor not attracting discipline; grievance allowed. *Re Rahn Metals and Plastics Limited and United Steelworkers, Local 6609; Shaw grievance*, March 8, 1976. Fraser — five pages. (32)

Suspension — grievor unfit to carry out work in safe manner — not a disciplinary matter; grievance dismissed. *Re Algoma Steel Corporation and United Steelworkers, Local 2251; Marshall grievance*, March 8, 1976. Majority: Palmer, Pyle — 11 pages; dissent: Munro — four pages. (33)

Unsafe conduct — grievor reckless, discipline justified; grievance dismissed. *Re International Nickel Company of Canada Limited and United Steelworkers, Local 6500; Larose grievance*, March 23, 1976. Majority: Gorsky, Simpson — seven pages; dissent: McVey — two pages. (34)

Unsatisfactory work performance on two occasions — discipline unjustified in first instance; cumulative discipline not being appropriate in second instance, warning letter substituted for two-day suspension. *Re Rahn Metals and Plastics Limited and United Steelworkers, Local 6609; Williams grievance*, April 7, 1976. Fraser — eight pages. (35)

Estoppel

Past practice of twelve years violates collective agreement — no acquiescence by union nor detrimental reliance by employer; estoppel not established. *Re Municipality of Metropolitan Toronto and Canadian Union of Public Employees, Local 43; James-Mitchell grievance*, March 29, 1976. Majority: Baum, Tate — 25 pages; dissent: Perron — 16 pages. (36)*

Union had previously acted on collective agreement — now estopped from claiming agreement invalid because of irregularities in execution. *Re Charterways Transportation Limited and Canadian Brotherhood of Railway, Transport and General Workers; company grievance*, March 23, 1976. Majority: Betcherman, Rogers — 14 pages; dissent: Simon — two pages. (37)*

Grievance Procedure

(1) Demand for particulars — union entitled to material facts on which company relies in sufficient detail to allow it to meet company's case; (2) Joinder of grievances — without consent of parties, grievances must be dealt with separately; (3) Timeliness — no time limits in agreement; grievance presented in reasonable time. *Re Dryden Paper Company Limited and United Paperworkers Union* — see (2), *supra*. (38)*

Failure of grievor to produce proof of absence which would have avoided arbitration — no jurisdiction in arbitrator to consider; grievance arbitrable. *Re Canada Valve Limited and International Molders and Allied Workers* — see (4), *supra*. (39)

Grievance submitted to arbitration beyond time limits — statutory discretion to waive time limits not exercised after review of merits; grievance dismissed. *Re Ayer Storage (Ontario) Limited and International Union of Operating Engineers; Reville grievance*, April 12, 1976. Majority: Ferguson, Tomilson — eight pages; dissent: Ward — five pages. (40)

Indefinite suspension made subject of grievance followed by definite suspension — suspensions directly related; both properly subject of original grievance. *Re Hiram Walker and Sons Limited and Canadian Union of Distillery Workers* — see (31), *supra*. (41)*

Notice to interested third party — two weeks' notice plus transcripts of prior hearing sufficient to satisfy requirements of natural justice. *Re Municipality of Metropolitan Toronto and Canadian Union of Public Employees* — see (36), *supra*. (42)*

Policy matter cannot be dealt with as individual grievance brought by union officials not personally affected; grievances dismissed. *Re Bell Canada and Communications Union Canada; Jordan, Wilton grievances*, April 20, 1976. Majority: Dunn, Gray — three pages; dissent: MacDowell — 19 pages. (43)

Holiday Pay

Entitlement — absence due to illness for one-half day prior to holiday does not disentitle grievor from receiving holiday pay; grievance allowed in part. *Re Canadian General Electric Company Limited and International Union of Electrical, Radio and Machine Workers; Miles grievance*, April 28, 1976. Majority: Brown, Lenkinsky — 17 pages; dissent: Bertuzzi — four pages. (44)*

Illegal Strike

Union liability — union officials failed to discourage strike; grievance allowed. *Re Charterways Transportation Limited and Canadian Brotherhood of Railway, Transport and General Workers* — see (37) *supra*. (45)*

Interpretation

Temporary assignment limited to five days before payment of higher rate — language requires five consecutive days; grievance dismissed. *Re Holmes Foundry Limited and United Automobile Workers, Holmes Foundry Unit of Local 456; Foster grievance*, April 8, 1976. Curtis — four pages. (46)

Job Posting

Bargaining unit employee to be considered before hiring from outside — grievance allowed; grievor awarded position and back pay, and outsider placed in preferential hiring position for 45 days. *Re Municipality of Metropolitan Toronto and Canadian Union of Public Employees* — see (36), (42), *supra*. (47)*

Vacancies created by exercise of seniority bumping rights after lay-off — agreement required posting; grievance upheld. *Re Domtar Construction Materials Limited and International Chemical Workers, Local 216; group grievance*, March 19, 1976. O'Shea, Phelan, Byers — 12 pages; addendum: Byers — one page. (48)

Job Vacancy

Employee hired from outside bargaining unit — due consideration given to applications from inside bargaining unit; no breach of collective agreement — grievances dismissed. *Re Ontario Council of Regents of Colleges of Applied Arts and Technology (Niagara College) and Civil Service Association of Ontario (Inc.); Bagley, Briscall grievances*, April 12, 1976. Brown, Correll, D. Anderson — 17 pages. (49)

Existence of vacancy — geographic location of employee not resulting in vacancy; grievance dismissed. *Re Corporation of the City of Mississauga and Canadian Union of Public Employees, Local 66; Miller grievance*, April 21, 1976. Majority: Schiff, Farrar — four pages; dissent: Tate — two pages. (50)

Manpower levels established by letter of understanding incorporated into collective agreement — failure to fill vacancy contrary to agreement; grievance allowed. *Re Air Canada and Canadian Air Line Employees Association, union grievance*, April 6, 1976. Brown — 13 pages. (51)

Onus on grievor to establish that vacancy exists in unit; grievance dismissed. *Re Emco Limited and United Steelworkers of America; Neve grievance*, March 31, 1976. Majority: Hinnegan, Byers — five pages; dissent: Brooks. (52)

Lay-off

Exercise of seniority rights — limited to choosing between transfer and lay-off; no right to choose location for transfer; grievances dismissed. *Re Eddy Forest Products Limited and Lumber and Sawmill Workers Union, Local 2693; Constantin, group grievances*, April 28, 1976. Majority: Beatty, Robinson — 20 pages; dissent: Wren — eight pages. (53)

Exercise of seniority rights — union steward super-seniority clause qualified; grievance sustained. *Re Square D Company Limited and United Electrical, Radio and Machine Workers; Franjic grievance*, March 10, 1976. Majority: Baum, Thornley — 11 pages; dissent: Clark — three pages. (54)

Overtime Pay

Entitlement — scheduled short shift change not entitling grievor to overtime rate — no violation of agreement; grievance dismissed. *Re International Nickel Company of Canada Limited and United Steelworkers, Local 6500; Artindale grievance*, April 26, 1976. Majority: Brown, MacCarthy — eight pages; dissent: Burrows — one page. (55)

Entitlement to overtime rate — grievor failing to "commence" work when called in by mistake on earlier shift — premium rate not payable for second shift in 24-hour period unless work commenced; employer properly paying four hours' reporting pay; grievance dismissed. *Re Outboard Marine Corporation of Canada Limited and United Steelworkers, Local 5009; Anderson grievance*, April 23, 1976. Curtis — six pages. (56)

Shift change — union failing to show work schedules not approved; grievor not entitled to overtime pay; grievance dismissed. *Re Union Drawn Steel Company Limited and United Steelworkers of America; Wardrope grievance*, April 5, 1976. Shime, Clark, Stetson — eight pages. (57)

Procedure

Adjournment — absence of counsel could not be reasonably anticipated; adjournment granted. *Re Patchogue Plymouth-Hawkesbury Mills, a division of Amoco Canada Petroleum Company Limited and International Woodworkers of America; Langevin grievance*, April 1, 1976. O'Shea, Winkler, Chalmers — six pages. (58)

Promotion

Probationary employee promoted over senior employees to position outside bargaining unit — position not covered by collective agreement; grievance dismissed. *Re GWG (Eastern) Limited and Amalgamated Clothing Workers, Local 551; policy grievance*, March 31, 1976. Brown — six pages. (59)

Qualifications for promotion to learner job — grievors lacking basic ability and qualifications; grievances dismissed. *Re Foster Wheeler Limited and United Steelworkers, Local 6519; Sampson et al grievance*, April 27, 1976. Weatherill — seven pages. (60)

Safety

Reimbursement sought for personal use eye-glasses lost at work — employer's offer to replace them with safety glasses reasonable; grievance dismissed. *Re International Nickel Company of Canada Limited and United Steelworkers of America; Difilippo grievance*, March 26, 1976. Majority: Hinnegan, Sanderson — seven pages; dissent: McVey. (61)

Seniority

Qualifications for promotion: (1) company not bound by seniority provisions in filling temporary vacancy per agreement; (2) permanent vacancy: grievor failing to meet reasonable minimal qualifications; grievances dismissed. *Re Rahn Metals and Plastics Limited and United Steelworkers, Local 6609; Ledoux grievances*, April 22, 1976. Fraser — seven pages. (62)

Qualifications for promotion — grievor with seniority meeting minimum standard requirements; grievance allowed. *Re Hydro Electric Commission of the Borough of Etobicoke and International Brotherhood of Electrical Workers, Local 636; Madgett grievance*, March 29, 1976. Andrews — eight pages. (63)

Qualifications where lay-off — grievors not qualified to bump into higher classification; grievances dismissed. *Re Dominion Glass Company Limited and United Glass and Ceramic Workers, Local 203; Taylor, O'Neil grievances*, April 26, 1976. Majority: Brown, Sanderson — 17 pages; dissent: Morgan. (64)

Qualifications where lay-off — grievor not relatively equal in skill, competence and ability to junior employees retained; grievance dismissed. *Re Bridge and Tank Company of Canada Limited and United Steelworkers, Local 2537; Matte grievance*, April 26, 1976. Majority: Weatherill, McKillop — ten pages; dissent: Morgan. (65)

Qualifications where lay-off — grievor unable to meet qualifications for retention; grievance dismissed. *Re McGraw-Edison of Canada Limited, Power Systems Division and United Steelworkers; Wilson grievance*, March 24, 1976. Majority: O'Shea, Whittaker — nine pages; dissent: Fagan. (66)

Unsatisfactory work performance during probationary period: grievor claiming position held before promotion — collective agreement not providing for bumping in these circumstances; grievance denied. *Re Irvin Industries Limited and International Association of Machinists and Aerospace Workers; Sahli grievance*, April 19, 1976. Majority: Dunn, Marchand — five pages; dissent: Tate — three pages; addendum: Dunn — one page. (67)*

Sick Pay

Failure to notify supervisor of illness — sick pay for one-half day absence denied; grievance dismissed in part. *Re Canadian General Electric Company Limited and International Union of Electrical, Radio and Machine Workers* — see (44), *supra*. (68)*

Vacations

Entitlement where lay-off — entitlement unaffected by absence from work; grievance allowed. *Re Gilbarco Canada Limited and Canadian Union of Golden Triangle Workers; Westfall grievance*, April 22, 1976. Simmons — ten pages. (69)

Wages

Merit increment partially withheld — collective agreement providing for maximum salaries within scales — no breach of collective agreement; grievance denied. *Re Ontario Council of Regents of Colleges of Applied Arts and Technology (Durham College) and Civil Service Association of Ontario (Inc.); Campbell grievance*, April 14, 1976. Majority: Brown, Wright — 15 pages; dissent: Hunter — one page. (70)

Merit increase recommended for exceptional performance not granted by employer — no automatic entitlement to merit increase and employer not bound to accept recommendation; grievance dismissed. *Re Ontario Council of Regents of Colleges of Applied Arts and Technology and Civil Service Association of Ontario (Inc.); McNuff grievance*, February 25, 1976. Majority: O'Shea, Wright — 13 pages; dissent: D. Anderson — two pages. (71)

Work Assignment

Additional duties assigned — duties properly part of job and within rights of management to reassign; grievance denied. *Re Timmins Board of Education and Canadian Union of Public Employees, Local 956; Reid et al grievance*, April 12, 1976. Majority: Abbott, Perry — 11 pages; dissent: DeGurse. (72)

Bargaining unit work assigned to foreman — foreman not transferred to bargaining unit — collective agreement violated; grievance allowed. *Re Micro Plastics Company Limited and International Chemical Workers Union, Local 956; Alfred et al grievances*, March 2, 1976. Hinnegan, Mutimer, Sergeant — ten pages. (73)

Contracting out of "occasional special services" permitted by agreement; special service repeated on several occasions over extensive period not "occasional"; grievances upheld. *Re Eddy Forest Products Limited and Lumber and Sawmill Workers' Union, Local 2693; union grievances*, April 6, 1976. Majority: Ferguson, Wren — 15 pages; dissent: Robinson — three pages. (74)

Improper assignment alleged — disputed work included under job description; grievance dismissed. *Re Douglas Aircraft of Canada Limited and United Automobile Workers, Local 673; Browne et al grievances*, April 22, 1976. Gorsky — nine pages. (75)

Non-bargaining unit employees assigned work — no violation of collective agreement; grievance dismissed. *Re Ontario Northland Railway and Railway Employees Department, Division 4, AFL-CIO; Pineault grievance*, March 31, 1976. Weatherill — nine pages. (76)

Part-time employees — senior employee entitled to preference when extra work available; grievance allowed. *Re Dominion Stores Limited and Retail, Wholesale and Department Store Union, Locals 427, 429, 925, 930; Haley grievance*, March 31, 1976. Majority: Brown, McArthur — 11 pages; did not concur: White. (77)

Students employed to perform supervisory functions — work performed not within usual duties of bargaining unit employees; grievance dismissed. *Re Brant County Board of Education and Canadian Union of Public Employees, Local 282; policy grievance*, April 20, 1976. Majority: Dunn, Wyatt — three pages; dissent: Maddison — three pages. (78)

Temporary assignment outside classification — no violation of collective agreement; grievance dismissed. *Re Eaton Yale Limited, Forestry Equipment Division and International Molders and Allied Workers; Hughes, Tree grievance*, March 16, 1976. Shime — four pages. (79)

Temporary work assignment outside grievor's classification; no violation of collective agreement; grievance dismissed. *Re Wyeth Limited and Oil, Chemical and Atomic Workers, Local 9-368; Lanoue grievance*, March 18, 1976. Hinnegan — seven pages. (80)

Work Scheduling

Where grievor could be scheduled to work in two different stores for a total of 36 hours per week, employer not justified in assigning part of grievor's job to part-time employee; grievance allowed. *Re Great Atlantic and Pacific Tea Company of Canada Limited and Canadian Food and Allied Workers, Locals 175, 633; Flynn grievance*, March 5, 1976. Palmer, Gilbert, Sanderson — nine pages; addendum: Sanderson — one page. (81)

The following awards in interest arbitrations under *The Hospital Labour Disputes Arbitration Act* were also filed with the Commission during the month of April: Huron Lodge (City of Windsor) and Ontario Nurses' Association, March 31, 1976. O'Connor, Kavanaugh — nine pages; partial dissent: Walsh — one page; addendum: Kavanaugh — two pages.

Salvation Army Grace Hospital; Windsor Western Hospital Centre Inc. (I.O.D.E. Unit); Hotel Dieu of St. Joseph; Metropolitan General Hospital, all of Windsor, and Service Employees' Union, Local 210, March 31, 1976. Majority: O'Connor, Burnell — 15 pages; dissent in part: Walsh — one page; addendum: Burnell — one page.

The awards may be seen at the office of the Commission, 400 University Avenue, 14th floor, Toronto. Copies of awards may be obtained for a fee of 50 cents per page. Orders will be filled on receipt of an application and a cheque or money order payable to the Treasurer of Ontario for the applicable amount, which should be forwarded to: Cashier's Office, Ministry of Labour, 400 University Avenue, Toronto, Ontario M7A 1V6.

Filing Awards

The attention of chairmen of boards of arbitration and sole arbitrators is drawn to the provision of Section 6(2) of the Regulation, which reads: 6.—(2) Every arbitrator shall, within ten days of issuing an award, file a copy thereof with the Commission. This provision would apply to all arbitrators approved under The Ontario Labour-Management Arbitration Commission Act and regardless of whether they were appointed as chairmen or sole arbitrators pursuant to the Act, by the parties or by the Minister.

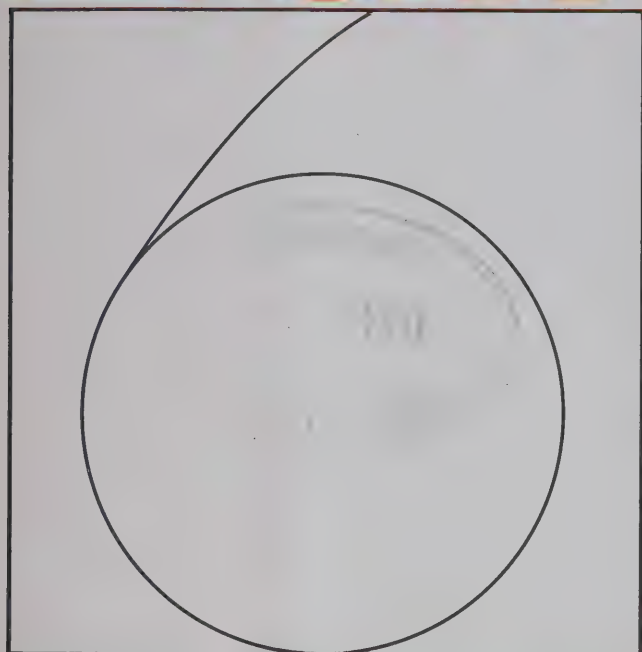
Mailing List

The Commission is preparing a comprehensive mailing list of persons interested in receiving the monthly Bulletin.

Anyone who wishes to be added to the list should write to the Commission stating the number of copies required.

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Monthly Bulletin



The Ontario Labour-Management
Arbitration Commission

His Honour Judge Walter Little, Chairman
Mary Calarco, Registrar



Ontario

Ontario Ministry of Labour
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Hon. Bette Stephenson, M.D., Minister
T. E. Armstrong, QC, Deputy Minister

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involved in labour-management
arbitrations.

Standing Committee on Arbitration Matters

The Labour Relations Section of the Canadian Bar Association — Ontario Branch — has appointed a Standing Committee to provide a forum for continuing communication and discussion between arbitrators and representatives of arbitration counsel concerning subjects of mutual concern in connection with the arbitration process, with the express object of identifying and exploring problems and opportunities concerning the arbitration process and attempt to develop recommendations in respect thereto. The members of the Committee are Messrs. H.D. Brown, S.T. Goudge, J. Sack, O.B. Shime, QC, T.F. Storie and W.K. Winkler. At the request of the Standing Committee, the Commission is pleased to quote as follows from the Standing Committee's Guidelines:

"The following recommendations of the Committee have been accepted by the Canadian Bar Association's Ontario Labour Relations Section and are herein communicated. The Committee recommends the following guidelines for

the benefit of arbitrators, nominees on arbitration boards, and parties appearing before arbitrators or arbitration boards:

1. Where a hearing before a sole arbitrator is completed in one day of sitting, the award should be issued not later than 30 days following the hearing. Where a hearing before an arbitration board is completed in one day of sitting, the nominees of the parties should make any written submissions to the chairman not later than 15 days from the date of the hearing. The chairman of the board should, where practicable, submit the draft award to the nominees within 30 days from the date of the hearing. The final award should, where practicable, be issued by the chairman within 45 days from the date of the hearing together with any dissent provided such is made available to the chairman within that time. All time limits may be modified at the discretion of the chairman in proper circumstances. The Committee notes that different considerations may apply in other cases,

as where, for example, the hearings continue for more than one day, or interim rulings are required, etc.

2. Arbitration board members should hold their executive session at the conclusion of the hearing to discuss the matters in issue whenever possible.
3. Labour and management representatives should take note that arbitrators may have early dates available for hearings as a result of cancellations and adjournments and should check with the arbitrator or chairman if it is necessary to arrange for an early hearing.
4. Representatives of the parties should assess the probable length of time it will take to deal with the case and should arrange at the outset for additional time if more than one day is required.
5. Where arbitrators charge a fee for cancellation of a hearing, parties should be advised in advance that such fees may be charged where a scheduled hearing is cancelled within 30 days of the time so reserved and is not otherwise filled by the arbitrator. Arbitrators should endeavour to schedule another case in place of that which was cancelled. The fee schedules of arbitrators, including cancellation policies, should be made available to the Ontario Labour Management Arbitration Commission.

The Committee also recommends that the Ontario Labour Management Arbitration Commission be empowered to compel the attendance of witnesses and, in particular, be empowered to issue subpoenas for witnesses in all arbitration hearings as required by the parties thereto."

It is the intention of the Committee to continue to meet and to make further recommendation in due course. Suggestions for improvement of the arbitration process are invited by the Committee and should be addressed to Mr. H.D. Brown, Chairman, Standing Committee on Labour Arbitration, Ontario Labour Relations Section, Canadian Bar Association, 36 King Street East, Suite 701, Toronto, Ontario, M5C 1E5.

The above recommendations are published by the Commission without comment to acquaint the recipients of this Bulletin with the views of the Committee of the Ontario Labour Relations Section of the Bar Association on the arbitration process.

Arbitrators

The name of G.S.P. Ferguson, QC, should be deleted from any list of the Commission's approved arbitrators which subscribers to this Bulletin may have in their possession, he having been elevated to the County Court bench. Heartly congratulations are offered to His Honour Judge Ferguson on his appointment.

Awards

The following awards were filed with the Commission during the month of May, under Section 6(2) of Ontario Regulation 635, R.R.O. 1970.

The summary was prepared at the Faculty of Law, Queen's University, under the supervision of C.G. Simmons, B.A., B.C.L., LL.M., and R.S. Irwin, B.A., LL.M.

* Indicates award to be reported in full or in part in *Labour Arbitration Cases*.

Arbitrability

Form of grievance — employer waiving objections to form; grievances arbitrable. *Re GTE Automatic Electric (Canada) Limited and International Union of Electrical, Radio and Machine Workers, Local 526; Pattemore, Galway grievances*, May 21, 1976. Shime, Henderson, Fraser — 19 pages. (1)*

Timeliness — whether grievance brought prematurely; grievance as to advertising of job vacancy brought before vacancy filled — grievances arbitrable. *Re Toronto Hydro Electric System and Canadian Union of Public Employees, Local 1; union grievance*, May 28, 1976. Brunner — seven pages. (2)

Collective Agreement

Incorporation of insurance plan into agreement — incorporation not an implication of agreement; board having no authority to enforce plan. *Re Great Atlantic and Pacific Company Limited and Canadian Food and Allied Workers; Lakeit grievance*, March 31, 1976. Rayner, Simon, McKeown — nine pages. (3)*

Incorporation of insurance plan — incorporation of summary of plan only a necessary implication of agreement. *Re GTE Automatic Electric (Canada) Limited and International Union of Electrical, Radio and Machine Workers* — see (1), *supra*. (4)*

Demotion

Disciplinary demotion for indefinite time — must be reasonable in reassessment; grievance dismissed. *Re Canadian Johns Manville Company Limited and International Chemical Workers Union, Local 346; Reiprich grievance*, May 6, 1976. Majority: Ferguson, King — 12 pages; dissent: Rogers — three pages. (5)*

Failure to meet job responsibilities — demotion justified. *Re Canadian Cannery Limited and International Association of Machinists, Local 863; Skedden grievance*, April 21, 1976. Majority: Rose, Harris — five pages; dissent: Tate — four pages. (6)

Failure to obtain tools of trade to perform job — grievance dismissed. *Re International Nickel Company of Canada Limited and United Steelworkers, Local 6500; Perrier grievance*, April 30, 1976. Majority: O'Shea, Stone — 14 pages; dissent: Carriere — two pages. (7)

Non-disciplinary demotion for excessive absenteeism; employer acting for reasons of operational efficiency — grievance dismissed. *Re Newman Structural Steel Limited and International Association of Bridge, Structural and Ornamental Iron Workers, Shopmen's Local 734; McComber grievance*, May 19, 1976. O'Shea — 11 pages. (8)

Discharge

Absence without leave and not following proper procedure in adjusting grievance; reinstatement with compensation. *Re Fruehauf Trailer Company and United Automobile Workers, Local 27; Dayment grievance*, May 18, 1976. Linden — seven pages. (9)

Absence without leave; company having agreed to settlement of grievance, reinstated with compensation. *Re Bendix Automotive of Canada Limited and United Automobile Workers, Local 195; Douglas grievance*, May 4, 1976. Gorsky — 12 pages. (10)

Absence without leave — grievor reasonably believing medical reasons justified absence; reinstatement without compensation ordered. *Re Douglas Aircraft Company of Canadian Limited and United Automobile Workers, Local 1967; McMillan grievance*, February 26, 1976. Rayner — eight pages. (11)

Absence without leave: whether applications for leave unreasonably denied; grievances allowed. *Re Providence Villa and Providence Hospital and Canadian Union of Public Employees, Local 1590; McLaughlin, Brown grievances*. Undated majority award: Linden, Tate — nine pages; dissent: Maguire — five pages. (12)

Absenteeism excessive — non-disciplinary discharge not justified; reinstatement of specific terms ordered. *Re Great Atlantic and Pacific Company Limited and Canadian Food and Allied Workers* — see (3), *supra*. (13)*

Absenteeism — grievor failing to notify company as to nature of continued absence once declared fit to work; discharge justified. *Re Industrial Wire and Cable Company and United Steelworkers, Local 7608; Amendola grievance*, May 27, 1976. Majority: Swan, Pyle — 17 pages; dissent: Martin. (14)

Carelessness in carrying out job responsibilities; suspension without compensation substituted. *Re King Paving and Materials Division of Flintkote Company of Canada Limited and Teamsters Local Union 879; Beck grievance*, May 5, 1976. Curtis, Cosburn, Hurd — 12 pages. (15)

Culminating incident: grievor not performing job responsibilities; suspension substituted. *Re Regional Municipality of Ottawa-Carleton and Ottawa-Carleton Public Employees' Union, Local 503; Parsons grievance*, May 5, 1976. Majority: Beatty, Deline — 28 pages; dissent: Reid — 30 pages. (16)

Culminating incident — wilful failure to report negligent damage to company vehicle; work record considered — discharge justified. *Re Regional Municipality of Niagara and Canadian Union of Public Employees, Local 1287; Richards grievance*, April 12, 1976. O'Shea, Kidd, Swayze — 16 pages. (17)

Drunkenness and consumption of alcohol on the job — discharge justified having regard to nature of responsibilities as watchman. *Re University of Guelph and Canadian Union of Public Employees, Local 1334; Scanlon grievance*, May 7, 1976. Majority: Brown, Sanderson — 21 pages; dissent: Maddison — three pages. (18)

Error of grievor in carrying out job responsibilities; grievance dismissed. *Re Oshawa General Hospital and Ontario Nurses' Association; Pettitt grievance*, May 8, 1976. Majority: O'Shea, Byers — 17 pages; dissent: Richards — four pages. (19)*

Failing to pass security clearance: employer not giving notice of requirement; refusing to give reasons for dismissal — discharge justified but compensation ordered. *Re Canadian National Telecommunications Limited and Canadian Brotherhood of Railway, Transport and General Workers; Maguire grievance*, April 14, 1976. Majority: Anderson, Dinsdale — 15 pages; dissent: Pethick — four pages. (20)

Falsification of pre-employment application — discharge not justified; suspension without compensation substituted. *Re Massey Ferguson Industries Limited and United Automobile Workers, Local 439, Dyniskvaric grievance*, May 4, 1976. McCulloch — 24 pages. (21)

Incompetence and quit alleged: psychiatric evidence conflicting — hearing adjourned to obtain third psychiatric opinion. *Re Public Utilities Commission, City of Kingston and International Brotherhood of Electrical Workers, Local 1678; Dunlop grievance*, May 12, 1976. Majority interim award: O'Connor, Davidge — nine pages; dissent: Fairweather. (22)

Insubordination: entering other work area and interrupting work; suspension substituted. *Re Coca-Cola Limited and Canadian Union of United Brewery Workers; Brett grievance*, May 25, 1976. Curtis — five pages. (23)

Insubordination: refusal to follow instructions and threatening language directed at supervisor; grievance dismissed. *Re International Nickel Company of Canada Limited and United Steelworkers; Bowman grievance*, May 4, 1976. Majority: Weatherill, Filion — nine pages; dissent: Burrows. (24)

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Refusal to perform work assigned: mitigating circumstances not justifying discharge; suspension substituted. *Re Great West Steel Industries Limited and United Steelworkers, Local 4515; Katz grievance*, May 14, 1976. Rubenstein — 13 pages. (26)

Improper preparation of meat — failure to establish wilful attempt by grievor to defraud; reinstatement without loss of seniority and with reimbursement for earnings lost. *Re Dominion Stores Limited and Retail, Wholesale and Department Store Union, Local 414; Skrtic grievance*, March 29, 1976. Majority: O'Shea, Reekie — 12 pages; dissent: White. (27)

Theft of company property; grievance dismissed. *Re International Harvester Company of Canada Limited and United Steelworkers, Local 2868; Truelove grievance*, March 29, 1976. Majority: Hinnegan, Harris — seven pages; dissent: Cooke — one page. (28)

Unsatisfactory work performance alleged: discharge unjustified; reinstatement on terms. *Re Spar Aerospace Products Limited and United Automobile Workers, Local 112; Matsubayashi grievance*, May 28, 1976. Linden — nine pages. (29)

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Absence from work: employer disputing grievor's evidence of illness; grievance allowed, compensation ordered. *Re Hershey Chocolate of Canada and Retail, Wholesale and Department Store Union, Local 414; Davis grievance*, April 21, 1976. Majority: Abbott, Wilson — 14 pages; dissent: Farrar — five pages. (31)

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Absence without permission: grievor alleging leave given to attend union meeting; conditional leave only granted — grievance dismissed. *Re Carling-O'Keefe Breweries Limited and International Union of United Brewery Workers, Local 325; Blauel grievance*, May 10, 1976. Curtis — eight pages. (33)

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Criminal charges pending: alleged assault during work hours — company failing to show business affected by charges; reinstatement with compensation ordered. *Re Brewers Warehousing Company Limited and United Brewers Warehousing Workers' Provincial Board; Goddard, Ripley grievances*, May 25, 1976. Brown — 16 pages. (35)*

Deliberate restriction of work; suspension justified. *Re Douglas Aircraft Company of Canada Limited and United Automobile Workers, Local 1967; MacLennan grievance*, April 26, 1976. O'Shea — 15 pages. (36)

Failing to follow correct procedures: verbal warning justified. *Re Allied Chemical Canada Limited and United Automobile Workers (Office Workers); Beck grievance*, May 18, 1976. Weatherill — seven pages. (37)

Insubordination: failing to remain on job after specific warning not to leave; suspension justified. *Re United Tire and Rubber Company Limited and United Rubber Workers; Watts grievance*, May 11, 1976. Anderson — five pages. (38)

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Residence requirement for stand-by employees: whether grievor readily accessible by telephone; grievance allowed. *Re Hydro Electric Commission of the Town of Lindsay and Canadian Union of Public Employees, Local 31; Childs grievance*, April 9, 1976. Majority: J.L. Roberts, Jones — ten pages; dissent: Fee — one page. (41)

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Existence of vacancy — employers' discretion: no obligation on employer to have three permanent relief drivers available; grievance dismissed. *Re Toronto Hydro Electric System and Canadian Union of Public Employees, Local 1; union grievance*, May 7, 1976. Brent — six pages. (49)

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Seniority: grievor claiming right to bump less senior employee on different job site; grievance dismissed. *Re King Paving and Materials Division of Flintkote Company of Canada and Teamsters, Local 879; Beattie grievance*, May 7, 1976. Majority: Brown, Cosburn — 12 pages; dissent: Hurd — two pages. (51)

Seniority: work force temporarily decreased without regard to seniority; grievance allowed. *Re Holmes Foundry Limited and United Automobile Workers, Local 456; Cochrane et al grievances*, May 25, 1976. Hinnegan — five pages. (52)

Work shortage: whether caused by contracting-out of bargaining unit work; grievance dismissed. *Re Hydro-Electric Commission, City of Mississauga and International Brotherhood of Electrical Workers, Local 636; Bonesteel grievance*, April 20, 1976. Majority: O'Shea, Sanderson — 15 pages; dissent: Levinson. (53)

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Seniority: temporary promotion of junior employee for extended period of time when senior employee refusing shift work; grievance dismissed. *Re International Nickel Company of Canada Limited and United Steelworkers, Local 6500; Cameron grievance*, April 12, 1976. Majority: O'Shea, Gilmore — nine pages; dissent: Lambert. (63)

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Qualifications for promotion — employer's decision reasonable, seniority not governing under collective agreement; grievance dismissed. *Re Board of Education for City of Toronto and Canadian Union of Public Employees, Local 1325; Robson grievances*, April 26, 1976. Majority: Hinnegan, Robinson — 14 pages; dissent: Acton — three pages. (69)*

Qualifications for promotion: grievor less qualified. *Re Colgate-Palmolive Limited and International Chemical Workers, Local 809; Webster grievance*, May 19, 1976. Majority: Weatherill, Sanderson — six pages; dissent: McIlwain. (70)

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Qualifications for promotion: improper assessment of qualifications; grievance allowed. *Re Corporation of the Borough of North York and Canadian Union of Public Employees, Local 373; Cameron grievance*, May 14, 1976. Kruger, Wren, Paulin (subject to addendum) — 14 pages; addendum: Paulin — two pages. (72)

Qualifications for promotion: whether grievors having sufficient qualifications and evident ability to perform the work; grievances dismissed. *Re Algoma Steel Corporation Limited and United Steelworkers, Local 2251; Hurly et al grievances*, May 5, 1976. Shime, Pyle, Wilton — seven pages. (73)

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Entitlement to vacation bonus — earlier award between parties deeming grievor to have taken vacation while on leave; grievance allowed. *Re International Nickel Company of Canada Limited and United Steelworkers* — see (64), *supra*. (82)

Scheduling: denial of grievor's request — employer exercising rights in arbitrary and unreasonable manner; grievance allowed. *Re Toronto Hydro Electric System and Canadian Union of Public Employees, Local 1; Jewell grievance*, May 4, 1976. Betcherman — eight pages. (83)*

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Employees refusing to cross picket line: whether employer justified in withholding wages; grievance dismissed. *Re Alcan Canada Products Limited and International Association of Machinists, Lodge 54; group grievance*, May 18, 1976. Majority: Weatherill, Sanderson — 12 pages; dissent: Munro — two pages. (84)*

Entitlement to wage rate increases — grievor entitled to increase as of anniversary date and not date unilaterally fixed by employer; grievance allowed, compensation ordered. *Re Municipality of Metropolitan Toronto and Canadian Union of Public Employees, Local 79; Rose grievance*, April 19, 1976. Majority: Kruger, Tate — nine pages; dissent: Perron — three pages. (85)

Incentive rate: whether company required to apply incentive rate; temporary standard only established — grievances dismissed. *Re Ferranti-Packard Limited and United Steelworkers, Local 5788; Brodeur, Fosker grievances*, April 29, 1976. Majority: Brown, Cook — 19 pages; dissent: Sharpe — two pages. (86)

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Transfer of customer account: union claiming territorial jurisdiction of bargaining unit; grievances dismissed. *Re Canteen of Canada Limited and Retail, Wholesale and Department Store Union, Local 414; Careless et al grievance*, May 4, 1976. O'Shea, Neilson, Spaxman — nine pages. (89)

The following awards in interest arbitrations under *The Hospital Labour Disputes Arbitration Act* were also filed with the Commission during the month of May.

Leamington District Memorial Hospital and Service Employees Union, Local 210, April 30, 1976. Ferguson, Bartlet — seven pages; dissent: Walsh — four pages.

Regional Municipality of Hamilton-Wentworth (Macassa Lodge and Wentworth Lodge) and Ontario Nurses' Association, May 5, 1976. Kruger, Walsh — 16 pages; dissent: Dixon — one page.

The awards may be seen at the office of the Commission, 400 University Avenue, 14th floor, Toronto. Copies of awards may be obtained for a fee of 50 cents per page. Orders will be filled on receipt of an application and a cheque or money order payable to the Treasurer of Ontario for the applicable amount, which should be forwarded to: Cashier's Office, Ministry of Labour, 400 University Avenue, Toronto, Ontario M7A 1V6.

Filing Awards

The attention of chairmen of boards of arbitration and sole arbitrators is drawn to the provision of Section 6(2) of the Regulation, which reads: 6.—(2) Every arbitrator shall, within ten days of issuing an award, file a copy thereof with the Commission. This provision would apply to all arbitrators approved under The Ontario Labour-Management Arbitration Commission Act and regardless of whether they were appointed as chairmen or sole arbitrators pursuant to the Act, by the parties or by the Minister.

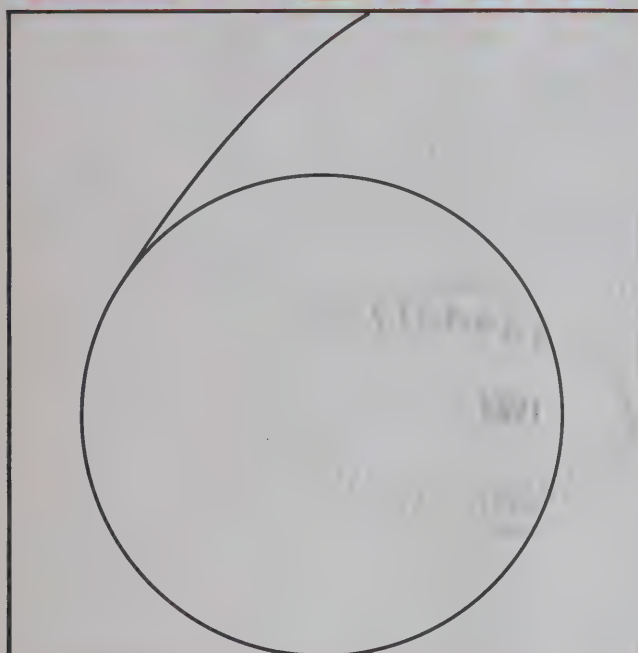
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Monthly Bulletin



The Ontario Labour-Management
Arbitration Commission

His Honour Judge Walter Little, Chairman
Mary Calarco, Registrar

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Hon. Bette Stephenson, M.D., Minister
T. E. Armstrong, QC, Deputy Minister

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(*Fanshawe College*) and *Civil Service Association of Ontario (Inc.)*; *Rachar grievance*, April 7, 1976. Majority: Palmer, McGivney — eight pages; dissent: Pennesi — one page. (3)

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Entitlement: grievor claiming bereavement pay while on sick leave; entitlement limited to days grievor otherwise would have worked — grievance dismissed. *Re International Nickel Company of Canada Limited and United Steelworkers of America, Vaillancourt grievance*, June 21, 1976. Majority: Brown, Stone — five pages; dissent: Burrows. (5)

Interpretation of "immediate family": grievor claiming right to maximum leave; grievance allowed in part. *Re Atlas Steels Company and Canadian Steelworkers Union; Thibault grievance*, June 4, 1976. Majority: Shime, Dinsdale — six pages; dissent: Simpson — three pages; addendum: Dinsdale — one page. (6)

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Jurisdiction to determine existence of collective agreement: interim award; adjournment *sine die*. *Re Engineered Structures and Components and Carpenters' District Council of Toronto and Vicinity, Locals 27, 666, 681, 1133, 1747, 1963, 3227, 3233; union grievance*, June 7, 1976. Interim award: O'Shea, Manson, Robinson — 15 pages. (7)*

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Assignment of work: whether certain work belonging exclusively to skilled trade inspectors; grievance dismissed. *Re Spar Aerospace Products Limited and United Automobile Workers, Local 112; policy grievance*, June 23, 1976. Simmons — nine pages. (8)

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Calculation of compensation on reinstatement by board of arbitration: loss of part-time earnings not mitigated by full-time earnings prior to reinstatement. *Re Dominion Stores Limited and Retail, Wholesale and Department Store Union, Local 414; Williamson grievance*, March 31, 1976. Majority: O'Shea, Reekie — 14 pages; dissent: White — three pages. (14)*

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Absence: bad weather; grievor informing employer — reinstatement with full compensation. *Re Montreal House and Hotel and Restaurant Employees International Union, Local 604; Martin grievance*, undated award. Petrie, How, Christie — three pages. (16)

Absence: falsified medical certificate produced; suspension without compensation substituted. *Re Massey-Ferguson Industries Limited and United Automobile Workers, Locals 439, 458; Rockery grievance*, June 4, 1976. Schiff — four pages. (17)

Absence without leave: evidence showing grievor ill; reinstatement without loss of seniority. *Re Texpack Limited and Canadian Textile and Chemical Union; Vinnai grievance*, June 7, 1976. Dunn, Healy, Endicott — four pages. (18)

Absence without leave: grievor notifying employer of illness; reinstatement without compensation. *Re Windsor Bumper Company and United Automobile Workers, Local 195; Tomasevic grievance*, June 1, 1976. Gorsky — five pages. (19)

Absence without leave: automatic loss of employment rights under collective agreement; grievances dismissed. *Re Regional Municipality of Peel and International*

Brotherhood of Electrical Workers, Local 636; Machalski, O'Connor grievances, June 3, 1976. O'Shea — 15 pages; dissent: Fisher — one page; partial dissent: Houck — one page. (20)*

Assaulting fellow employee: provocation and employee record considered; grievance dismissed. *Re Goodyear Canada Inc. & United Rubber Workers, Local 232; Barnes grievance*, May 28, 1976. Majority: Rose, Filion — five pages; dissent: Tate — six pages. (21)

Culminating incident: negligent backing of truck — past record not justifying discharge; suspension substituted. *Re Teskey Concrete Company Limited and Teamsters, Local 230; Mader grievance*, June 4, 1976. Majority: Dunn, Beaulieu — five pages; dissent: Elkind — one page. (22)

Defrauding the company: grievor cashing replacement cheque, having previously cashed original; grievance dismissed. *Re Massey-Ferguson Industries Limited and United Automobile Workers, Local 439; McKenzie grievance*, June 18, 1976. Linden — five pages. (23)

Deemed quit: employer treating employees' responses to questions as termination — responses made without prejudice; reinstatement with compensation. *Re Corporation of the Town of Strathroy and Canadian Union of Public Employees, Local 107; Blair, McDonald grievances* May 18, 1976. Palmer, Morrissey, Pennesi — seven pages. (24)

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Insubordination: refusal to perform work alleged; abusive language not constituting refusal to perform work — suspension substituted. *Re Indal Products Limited and United Steelworkers of America; Aguilar grievance*, June 9, 1976. O'Shea — seven pages. (27)

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Loss of chauffeur's licence involving alcohol offence: whether grievor violating express conditions of probationary re-employment; grievance allowed in part without compensation. *Re Brewers' Warehousing Company Limited and United Brewers' Warehousing Workers Provincial Board; Cummings grievance*, May 17, 1976. Palmer — nine pages. (29)

Medical evidence of unfitness: company doctor relying on dated report; disposition conditional on independent medical opinion. *Re Fleet Industries Limited and International Association of Machinists and Aerospace Workers; Yates grievance*, May 18, 1976. Majority: Rayner, Marchand — seven pages; dissent: Wren — three pages. (30)

Negligence and incompetence in performing duties: mandatory and regulatory discharge procedures in collective agreement; suspension substituted. *Re Regional Municipality of Niagara and Canadian Union of Public Employees, Local 1287; Fennell grievance*, June 14, 1976. McCulloch, Noble, Greaves — 41 pages. (31)

Theft of company money: evidence of lie detector test admitted; grievance dismissed. *Re Dominion Stores Limited and Retail, Wholesale and Department Store Union, Local 414; Warelis grievance*, June 7, 1976. O'Shea, Reekie, White — nine pages. (32)*

Discipline

Abusive treatment of a patient — proper cause for discipline; grievance denied. *Re St. Mary's General Hospital and Ontario Nurses Association; Leahey grievance*, June 18, 1976. Majority: Brown, Cook — 15 pages; dissent: Walsh — one page. (33)

Employer not acting consistently with past practice: adequate notice of change in policy not given to employees; grievance allowed. *Re Halton-Mississauga Ambulance Service Limited and Civil Service Association of Ontario; House grievance*, May 12, 1976. Brandt, Baldwin, Hunter — 13 pages; addendum: Baldwin — two pages. (34)

Failure to ensure safety of employees under grievor's direction — company not proving grievor responsible for employees involved in accident; grievance allowed. *Re Steel Company of Canada Limited and United Steelworkers, Local 1005; Pin grievance*, May 6, 1976. Majority: Fraser, Warrian — 13 pages; dissent: Morley — five pages. (35)

Insubordination: absence without leave; lesser suspension substituted. *Re GSW Appliances Limited and United Steelworkers, Local 3129; Young grievance*, June 14, 1976. Baum — ten pages. (36)

Insubordination: abusive language directed at foreman; grievance dismissed. *Re Steel Company of Canada Limited, Hilton Works and United Steelworkers, Local 1005; Coutts grievance*, June 11, 1976. Majority: Gorsky, Morley — eight pages; dissent: Stetson. (37)

Insubordination: employer treating request for sick leave as refusal to work; grievance dismissed. *Re Air Canada and International Association of Machinists; Strain grievance*, June 8, 1976. Brown — 14 pages. (38)

Insubordination: leaving production line without permission — foreman not supplying relief when requested; grievance allowed. *Re Indal Products Limited and United Steelworkers, Local 2729; Tiliacos grievance*, June 17, 1976. Majority: Ferguson, Hart — seven pages; dissent: Storie — three pages. (39)

Insubordination: refusing to follow instructions; grievance dismissed. *Re Canada Packers, Food Service Division and Canadian Food and Allied Workers, Local P114; Gillam grievance*, June 11, 1976. Majority: Gorsky, Gretton — 15 pages; dissent: Dawson. (40)

Insubordination: refusing to read memo given by supervisor; grievance dismissed. *Re Fanshawe College of Applied Arts and Technology and Ontario Public Service Employees Union; Langille grievance*, May 7, 1976. O'Shea, Anderson, Mason — 13 pages. (41)

Insubordination: union steward disobeying instruction; position as union official warranting special immunity from discipline — grievance allowed. *Re Ford Motor Company of Canada Limited and United Automobile Workers, Local 707; Rondeau grievance*, April 26, 1976. Palmer — four pages. (42)*

Lateness and absenteeism: employer requiring corroborative evidence justifying future absence; grievance dismissed. *Re Canadian Cannery Limited and International Association of Machinists, Local Lodge 863; Ivan grievance*, June 9, 1976. Majority: Dunn, White — six pages; dissent: Tate — three pages. (43)

Leaving work without permission and absence without leave: grievor not providing details of personal reasons for absence; grievances allowed without compensation. *Re Eaton Yale Limited, Forestry Division and International Molders and Allied Workers; grievances 75.34, 75.46*, May 31, 1976. Shime — eight pages. (44)

Loss of job qualifications: driver's licence of grievor suspended; grievance dismissed. *Re Consumers Gas Company and International Chemical Workers, Local 161; Zuiker grievance*, June 9, 1976. Majority: Brown, Healey — 12 pages; dissent: McIlwain. (45)*

Unsatisfactory work performance — just cause for two-day suspension; grievance dismissed. *Re Toronto General Hospital and Nurses Association Toronto General Hospital; Musa grievance*, May 16, 1976. Majority: Brown, Clark — 37 pages; did not concur: Walsh. (46)

Evidence

Admissibility of lie detector test; discharge: witness to alleged theft taking test; grievance dismissed. *Re Dominion Stores Limited and Retail, Wholesale and Department Store Union* — see (32), *supra*. (47)*

Medical fitness for call-back: conflicting medical evidence reconciled by independent opinion, binding on company under collective agreement; reinstatement with compensation. *Re Norton Company Electric Furnace Plants and International Chemical Workers, Local 154; Piner grievance*, May 27, 1976. O'Shea — 14 pages. (48)

Production of evidence — summons of witnesses: grievance allowed; adjournment *sine die* pending production of evidence as to *quantum*. *Re Harry Woods Transport Limited and Teamsters, Local 141; policy grievance*, May 6, 1976. Rose — nine pages. (49)

Grievance Procedure

Time limits: grievor delaying initiation of grievance beyond time limits pending outcome of criminal proceedings; grievance not arbitrable. *Re Pamour Porcupine Mines Limited and United Steelworkers of America; Devcich grievance*, June 28, 1976. Majority: Dunn, Gilmore — four pages; dissent: Ames — two pages. (50)*

Holiday Pay

Entitlement: grievor on leave of absence on day claimed — whether absence for union business: grievance dismissed. *Re International Nickel Company of Canada Limited and United Steelworkers of America; Fortin grievance*, June 21, 1976. Majority: Weatherill, Gilmore — ten pages; dissent: Burrows. (51)

Job Description

Employer authority to change job description: union alleging potential safety hazard; grievance dismissed. *Re Toronto Electric Commissioners and Canadian Union of Public Employees, Local 1; policy grievance*, May 6, 1976. Palmer — seven pages. (52)

Job Posting

Failure to advertise vacancy: collective agreement exempts from posting requirement; grievance dismissed. *Re Ontario Hydro and Canadian Union of Public Employees, Local 1000; policy grievance*, June 11, 1976. Majority: Weatherill, Hamilton — 11 pages; dissent: MacDowell — seven pages. (53)

Vacancy filled before required time of posting expired; grievor failing to show loss — grievance dismissed. *Re Canadian Johns Manville Company Limited and International Chemical Workers, Local 346; Grams grievance*, June 18, 1976. Weatherill, McIlwain, Mustard — nine pages. (54)

Job Vacancy

Bargaining unit position vacant after management foremen position created — whether employer required to fill positions; grievance allowed. *Re Ontario Hydro and Canadian Union of Operating Engineers, Local 110; union grievance*, June 2, 1976. Majority: Shime, Gilbert — 12 pages; dissent: Hamilton. (55)*

Company rectifying error made in awarding position and revoking incorrect appointment; grievance dismissed. *Re International Nickel Company of Canada Limited and United Steelworkers, Local 6500; LeBlanc grievance*, May 27, 1976. Majority: Gorsky, Fortier — 13 pages; dissent: McVey. (56)

Alleged hiring of candidates from outside bargaining unit before job posting — prolonged advance discussions with outside candidate making genuine "consideration" of internal candidates impossible; declaration of breach of collective agreement. *Re Toronto Star Limited and Toronto Newspaper Guild, Local 87; policy grievance*, June 2, 1976. Arthurs — 11 pages. (57)*

Promotion: employer abolishing position after job posted; grievance dismissed. *Re Sperry Gyroscope Ottawa Division, Sperry Rand Canada Limited and United Automobile Workers of America; Perkins grievance*, April 27, 1976. Majority: Palmer, Winkler — six pages; dissent: Dowell. (58)

Lay-off

Abnormal work conditions — grievor unable to perform work efficiently; company failing to provide equipment as stipulated in collective agreement — reinstatement with compensation. *Re Tom Jones and Sons Limited and Labourers' International Union, Local 1036; Leadbeater grievance*, May 31, 1976. Majority: Fraser, Kozak — 11 pages; did not concur: Erickson. (59)

Employer scheduling unpaid leave of absence contrary to collective agreement; grievance allowed. *Re Sudbury Memorial Hospital and Ontario Nurses Association, Local 130; policy grievance*, May 26, 1976. Majority: McCulloch, Walsh — 16 pages; did not concur: Warren. (60)

Interpretation of temporary lay-off provision: whether lay-off begins on notice or when employment time lost; grievance allowed. *Re Ford Motor Company of Canada Limited and United Automobile Workers, Local 707; Simonetti grievance*, April 23, 1976. Palmer — four pages. (61)

Qualifications to displace junior employee: employer requiring test of grievor's ability; collective agreement providing for training period — grievance allowed. *Re Eaton Yale Limited, Forestry Equipment Division and International Molders and Allied Workers; Craven grievance*, June 10, 1976. Shime — eight pages. (62)

Qualifications where lay-off: whether grievor relatively equal to junior employee in experience, efficiency, skill, reliability; grievance dismissed. *Re Robert Soper Limited and Textile Workers Union, Local 31; Michailic grievance*, May 28, 1976. J.L. Roberts, Murray, Reeds — 13 pages. (63)

Reduced hours of work constituting lay-off — seniority provisions applying; grievance allowed. *Re Victoria Hospital and London and District Building Service Workers; Caughy grievance*, April 21, 1976. Majority: Rayner, Walsh — 11 pages; dissent: Mitchnick. (64)*

Seniority applying in all lay-off situations; ability of grievors to perform work of junior employees — grievances allowed. *Re Dresser Industrial Products Limited and United Steelworkers, Local 5475; Dean et al grievances*, May 18, 1976. Palmer — seven pages. (65)

Management Rights

Production standards: employer instituting "measured day work" system; grievance dismissed. *Re Emanuel Products Limited and International Woodworkers of America; policy grievance*, June 3, 1976. Majority: Weatherill, Healy — seven pages; dissent: Bedard. (66)*

Overtime

Entitlement: grievor's health preventing him from working alone; grievance dismissed. *Re Ford Motor Company of Canada Limited and United Automobile Workers, Local 707; Cubitt grievance*, April 23, 1976. Palmer — six pages. (67)

Equalization period not limited to term of collective agreement; grievance dismissed. *Re International Nickel Company of Canada Limited and United Steelworkers of America; policy grievance*, April 30, 1976. Majority: Rayner, Gilmore — eight pages; dissent: Burrows — three pages. (68)*

Lost work opportunity: work performed by employee in different classification claimed by grievor; grievance dismissed. *Re Allied Chemical Canada Limited and United Automobile Workers, Local 89; Jones grievance*, May 5, 1976. Palmer — four pages. (69)

Remedy for missed overtime opportunity: entitlement mechanism containing automatic correction factor; grievance allowed without compensation. *Re Canadian Johns-Manville and International Chemical Workers, Local 346; Borg grievance*, June 17, 1976. Majority: Burkett, Filion — 17 pages; did not concur: McIlwain. (70)*

Overtime Pay

Entitlement to premium rate: whether regular employee on sixth shift to be paid at straight time; grievance dismissed. *Re Journal Publishing Company of Ottawa Limited and Ottawa International Printing and Graphic Communications Union, Local 62; policy grievance*, June 11, 1976. Majority: Curtis, Sanderson — six pages; dissent: Gilligan — one page. (71)

Holiday work: grievor entitled to additional double time for all hours worked on a holiday; grievance allowed. *Re City of Timmins and Canadian Union of Public Employees, Local 210; Aube et al grievances*, June 9, 1976. Dunn, Noble, DeGurse — four pages. (72)

Probationary Employee

Previous probationary period, after termination of service, added to a second probationary period; grievances allowed. *Re Electrohome Limited and International Brotherhood of Electrical Workers, Local 2345; Bonnell et al grievances*, June 7, 1976. Majority: R.J. Roberts, Pretty — 11 pages; dissent: Paulin — five pages. (73)*

Procedure

Board of arbitration refusing union request for adjournment: non-appearance by union; grievance dismissed. *Re Sterling Tile Company and Resilient Floor Workers, Local 2965; union grievance*, April 10, 1976. Majority: Boscariol, Hersey — six pages; partial dissent: Ryan — one page. (74)

Non-appearance of witnesses; non-production of evidence: documentation of summons; adjournment *sine die*. *Re Harry Woods Transport Limited and Teamsters* — see (49), *supra*. (75)

Timeliness: union late in notifying company of appointment; test for mandatory time limits applied — preliminary objection overruled. *Re Steel Company of Canada Limited, Hilton Works and United Steelworkers, Local 1005; Mitchell grievance*, June 1, 1976. Interim majority award: Gorsky, Walsh — 18 pages; dissent: Storie — three pages. (76)

Promotion

Qualifications for promotion: relative abilities of applicants considered; grievance dismissed. *Re Corporation of City of North Bay and North Bay Professional Fire Fighters Association, Local 284; Rayner et al grievance*, June 16, 1976. Verity — 11 pages. (77)

Qualifications for promotion: sufficient ability of grievor established; grievance allowed. *Re Corporation of City of Brantford and Brantford Civic Employees, Local 181; Surmanski grievance*, June 11, 1976. Majority: Hinnegan, Heeley — 13 pages; dissent: Clark — three pages. (78)

Recall

Seniority rights: junior employee in lower classification recalled before grievor; grievance allowed. *Re Eaton Yale Limited and International Molders and Allied Workers; Sinatra grievance*, June 10, 1976. Shime — six pages. (79)

Res Judicata

Previous award: principles applicable — previous award not between same parties; grievances dismissed. *Re Duplate Canada Limited and United Automobile Workers of America; Radenkovic, Bastien grievances*, June 18, 1976. Fraser — 14 pages. (80)

Scheduling of Work

Change in work schedule without union's consent — discussions held without agreement: employer complying with obligations under collective agreement; grievance dismissed. *Re Toronto Hydro-Electric System and Canadian Union of Public Employees, Local 1; policy grievance*, June 9, 1976. Ferguson — six pages. (81)

Changing length of shift: collective agreement stipulating secret ballot; employees asserting right to initiate change; grievance dismissed. *Re Ottawa General Hospital and Nurses Association Ottawa General Hospital, union grievance*, June 21, 1976. Shime, Sirois, Walsh — five pages. (82)

Change of shift to two-week rotating schedule — employer declared in violation of agreement; grievance allowed. *Re Provisional County of Haliburton (Hyland Crest Senior Citizens Home) and Canadian Union of Public Employees, Local 1225; Dugan grievance*, June 15, 1976. Majority: Swan, Acton — ten pages; dissent: Harnden — six pages. (83)

Overtime: grievor advised of shift change after completion of shift on previous week; grievance allowed. *Re International Nickel Company of Canada Limited and United Steelworkers of America; Morrison grievance*, June 4, 1976. Weatherill, McVey, Sanderson — seven pages; addendum: Sanderson — one page. (84)

Seniority

Displacement of junior employee: limited to classification carrying same rate of pay; grievance dismissed. *Re St. Lawrence Seaway Authority and Canadian Brotherhood of Railway, Transport and General Workers; Boutin grievance*, June 17, 1976. Weatherill — eight pages. (85)

Qualifications for promotion: no applicant, including grievor, qualified — selection by company of junior employee for training; grievance dismissed. *Re Liquid Carbonic Canada Limited/Limitée and United Steelworkers, Local 12998; Gough grievance*, June 16, 1976. Majority: Weatherill, Filion — six pages; dissent: Gage. (86)

Transfer

Transfer of employee to different job in same classification on return after lengthy absence: no vacancies in former job; grievance dismissed. *Re Metro Toronto News Company and Warehousemen and Miscellaneous Drivers, Local 419; Lewis grievance*, June 4, 1976. Majority: Beatty, Robinson — 12 pages; dissent: Thompson — two pages. (87)

Downgrading due to shortage of work in department: junior employee retained where grievor less qualified; grievance dismissed. *Re Provincial Crane Division of Dominion Bridge Company Limited and International Association of Machinists, Local Lodge 1031; Fuccillo grievance*, May 17, 1976. Majority: Kruger, Stringer — six pages; did not concur: Tate. (88)

Unjust transfer alleged: employer alleging absolute right to transfer; grievance allowed. *Re Lakehead Board of Education and Service Employees International Union, Local 268; Judson grievance*, June 11, 1976. Majority: Aggarwal, Gareau — 17 pages; partial dissent: Holt. (89)

Union Officials

Discipline: union steward disobeying instruction while on union business; official position warranting special immunity from discipline — grievance allowed. *Re Ford Motor Company of Canada Limited and United Automobile Workers* — see (42), *supra*. (90)*

Vacation Pay

Calculation: whether previous year's vacation pay to be included in calculating annual earnings; grievances dismissed. *Re Duplate Canada Limited and United Automobile Workers* — see (80), *supra*. (91)*

Trust fund for vacation pay: company failing to remit vacation pay to fund; grievance allowed. *Re Jedwood Corporation and United Brotherhood of Carpenters and Joiners, Local 93; Leclair grievance*, May 26, 1976. Majority: McCaughey, Power — eight pages; dissent: Tourangeau — one page. (92)

Wages

Incentive pay: lower wages earned following transfer; change in method of production alleged — grievance dismissed. *Re International Hardware Company of Canada Limited and International Molders and Allied Workers, Local 428; Radford grievance*, June 23, 1976. Curtis — six pages. (93)

Reporting pay: company not compelled to provide transportation to grievor in emergency call-out; grievance dismissed. *Re International Nickel Company of Canada Limited and United Steelworkers, Local 6500; Ackland grievance*, May 11, 1976. Majority: Hinnegan, Filion — five pages; dissent: Rouleau: (94)

Unilateral reduction of pay and vacation pay, deduction for lost tools; grievance allowed. *Re Jedwood Corporation and United Brotherhood of Carpenters and Joiners* — see (92), *supra*. (95)

Welfare Plans

Entitlement to disability benefits: sufficiency of medical evidence; grievance dismissed. *Re International Harvester Company of Canada Limited and United Automobile Workers of America; Bechard grievance*, June 22, 1976. O'Connor — nine pages. (96)

Work Assignment

Seniority: entitlement to specific work and overtime; employer claiming emergency exception to seniority rule — grievance allowed. *Re Brinks Canada Limited and Warehousemen and Miscellaneous Drivers, Local 419; McDermid grievance*, June 16, 1976. Majority: Brown, Cape — ten pages; dissent: Stringer — one page. (97)

The following awards in interest arbitrations under *The Hospital Labour Disputes Arbitration Act* were also filed with the Commission during the month of June.

Delaware Nursing Home (McKegney & Harris c.o.b. as) and London and District Service Workers, Local 220, Gorsky — 16 pages; partial dissent: Walsh — one page; dissent: Perkins.

Queen's Avenue Manor and London and District Service Workers, Local 220, Gorsky — 15 pages; partial dissent: Walsh — one page; dissent: Perkins.

Shady Lane Nursing Home and London and District Service Workers, Local 220, Gorsky — 16 pages; partial dissent: Walsh — one page; dissent: Perkins.

St. Vincent Hospital, Ottawa and International Union of Operating Engineers, Local 796, O'Connor — seven pages; addendum (partial dissent): Lemay — one page; partial dissent: Lister — one page.

Participating Hospitals, 36 in number, and Ontario Public Service Employees, representing Paramedic Staff in those Hospitals, Kruger, Blair — nine pages; addendum: Blair — one page; dissent: Wren — three pages.

Country Place Nursing Homes Limited and Canadian Union of Public Employees and its Local 1854, McCulloch, Dixon, Walsh — Memorandum of Agreement between the Parties.

The awards may be seen at the office of the Commission, 400 University Avenue, 14th floor, Toronto. Copies of awards may be obtained for a fee of 50 cents per page. Orders will be filled on receipt of an application and a cheque or money order payable to the Treasurer of Ontario for the applicable amount, which should be forwarded to: Cashier's Office, Ministry of Labour, 400 University Avenue, Toronto, Ontario M7A 1V6.

Filing Awards

The attention of chairmen of boards of arbitration and sole arbitrators is drawn to the provision of Section 6(2) of the Regulation, which reads: 6.—(2) Every arbitrator shall, within ten days of issuing an award, file a copy thereof with the Commission. This provision would apply to all arbitrators approved under The Ontario Labour-Management Arbitration Commission Act and regardless of whether they were appointed as chairmen or sole arbitrators pursuant to the Act, by the parties or by the Minister.

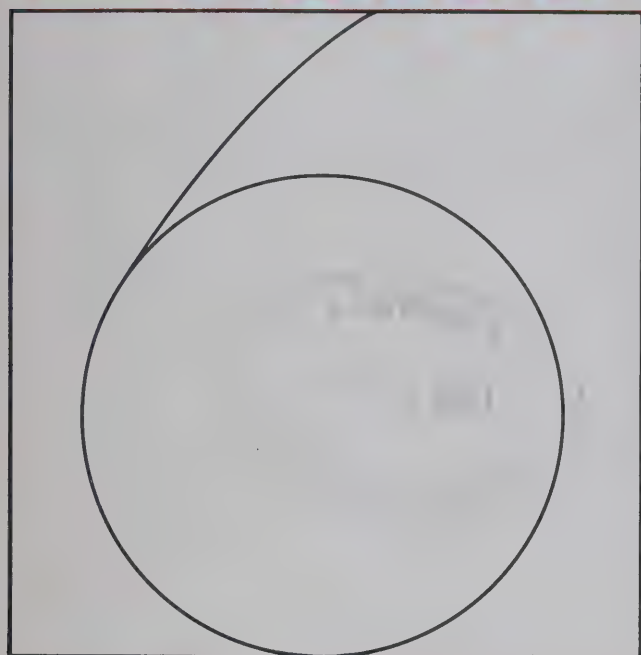
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Monthly Bulletin



The Ontario Labour-Management
Arbitration Commission

His Honour Judge Walter Little, Chairman
Mary Calarco, Registrar

Ontario Ministry of Labour
400 University Avenue, 14th Floor
Toronto, Ontario
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Hon. Bette Stephenson, M.D., Minister
T. E. Armstrong, QC, Deputy Minister

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Arbitration Panels

All readers are reminded that, when writing for the assistance of the Commission in the provision of panels of arbitrators, their letters should be directed to the Registrar of the Commission at its Toronto address, and not to the Chairman.

Awards

The following awards were filed with the Commission during the months of June and July, under Section 6(2) of Ontario Regulation 635, R.R.O. 1970.

The summary was prepared at the Faculty of Law, Queen's University, under the supervision of C.G. Simmons, B.A., B.C.L., LL.M., and R.S. Irwin, B.A., LL.M.

*Indicates award to be reported in full or in part in *Labour Arbitration Cases*.

Arbitrability

Employee evaluation: whether constituting disciplinary action; grievance not arbitrable. *Re Mount Sinai Hospital and Nurses' Association; Anderson grievance*, June 16, 1976. Brandt, Robinson, Walsh — nine pages. (1)*

Grievance arising under previous collective agreement — current collective agreement has no application. *Re Orenstein and Koppel Canada Limited and International Association of Machinists, Local 1740; Osipenko grievance*, July 15, 1976. Majority: Brunner, Tate — 24 pages; dissent: McKillop — four pages. (2)*

Grievor claiming violation of right to moving expenses; whether rights conferred by employer-issued "Guidelines" subject to arbitration: grievance dismissed. *Re St. Lawrence Seaway Authority and Public Service Alliance of Canada; Hallett grievance*, July 26, 1976. Weatherill, Cochrane, Toupin — 11 pages; addendum: Cochrane — two pages. (3)*

Grievor electing alternate form of discipline — not unequivocal act of settlement of dispute; grievance allowed. *Re Air Canada and Canadian Air Line Employees' Association; Cifa grievance*, June 24, 1976. O'Shea — seven pages. (4)*

Jurisdiction of board — abuse of management's discretion a proper grievance per collective agreement; grievance arbitrable. *Re Atomic Energy of Canada Limited and Society of Professional Engineers and Associates; Yousef grievance*, July 16, 1976. Majority interim award: Curtis, Posen — six pages; dissent: Clark — three pages. (5)*

Policy grievance — pension dispute affecting employees generally, properly brought as policy grievance; previous award not proved wrong — grievance arbitrable. *Re Tillsonburg District Memorial Hospital and London and District Building Service Workers Union, Local 220; policy grievance*, July 22, 1976. Majority: Brown, Walsh — ten pages; dissent: Farrar — two pages. (6)

Bargaining Unit

Work performed by non-bargaining unit, supervisory employees: employer claiming exception in collective agreement; grievances allowed. *Re Windsor Chrome Plating Company Limited and United Automobile Workers, Local 195; Pekor grievances*, June 30, 1976. Brandt — 11 pages. (7)

Classification

Employer reclassifying job when posting vacancy; proper classification considered; grievance dismissed. *Re Hayes-Dana Limited and United Automobile Workers, Local 374; MacDonald grievance*, July 5, 1976. Weatherill — seven pages. (8)

Grievor alleging assignment of work outside of classification: classification admitting of flexible work assignment; grievance dismissed. *Re Windsor Chrome Plating Company Limited and United Automobile Workers* — see (7), *supra*. (9)

Union challenging employer's classification of new job: board empowered to alter classification; grievance dismissed. *Re Imperial Tobacco Products (Ontario) Limited and Tobacco Workers International Union, Local 323; union grievance*, June 16, 1976. Majority: Brandt, Sanderson — ten pages; dissent: Ladd — two pages. (10)

Work of lower classification assigned to higher classification — functions of job classifications overlapping: no reclassification; grievance dismissed. *Re Canadian Pacific Limited (Telecommunications Department) and Transportation-Communication Division, Brotherhood of Railway, Airline and Steamship Clerks; Coons grievance*, July 28, 1976. Weatherill — ten pages. (11)

Collective Agreement

Existence of collective agreement: declaration by Labour Relations Board; grievance arbitrable. *Re Norfolk Hospital Association and London and District Building Service Workers' Union, Local 220; Udell grievance*, July 22, 1976. Majority: Brown, Walsh — 12 pages; dissent: Farrar. (12)

Implied grievance and arbitration provisions to give efficacy to Continuation Agreement. *Re Orenstein and Koppel Canada Limited and International Association of Machinists* — see (2), *supra*. (13)*

Compensation

Duty to mitigate — employer offering work: calculation of compensation where work available. *Re ITT Cannon Electric Canada and United Automobile Workers; Solomon et al grievances*, July 8, 1976. Weatherill, Blackburn, Gilmore — seven pages. (14) See also Vol. 5, 10(62).

Damages

Back-pay ordered by previous award: whether grievor mitigated his loss; previous award implemented. *Re GSW Appliances Limited and United Steelworkers, Local 3129; Shopovski grievance*, July 5, 1976. Baum — five pages. (15)

Demotion

Failing to improve inadequate job performance; grievance dismissed. *Re H.J. Heinz Company of Canada Limited and Sheet Metal Workers' International Association, Local 286; Foster grievance*, July 28, 1976. Brown, Dinsdale, Kurchak — 12 pages. (16)

Discharge

Absence without leave: grievor reporting sick while absent from country; suspension substituted. *Re Air Canada and International Association of Machinists; Kliese grievance*, June 30, 1976. O'Shea — 14 pages. (17)

Culminating incident: intoxication on job; grievance dismissed. *Re Massey-Ferguson Industries Limited and United Automobile Workers; Turner grievance*, June 30, 1976. O'Connor — seven pages; addendum — one page. (18)

Culminating incident: repeated disciplinary action; employer failing to prove culminating offence; grievance allowed. *Re ESB Canada Limited and International Union of Electrical, Radio and Machine Workers, Local 512; McKenzie grievance*, July 17, 1976. Majority: Dunn, Aslin — five pages; dissent: Morley — six pages; addendum: Dunn — two pages. (19)

Deliberately holding back production: board considering jurisdiction to alter penalty imposed; suspension substituted. *Re Scherer-G.C. Limited and Canadian Food and Allied Workers, Local 175; Lesperance grievance*, July 22, 1976. Brandt — 33 pages. (20)

Employer alleging quit: grievor absent from work for extended period due to work injury; reinstatement with compensation. *Re St. Lawrence Starch Company Limited and Retail, Wholesale and Department Store Union, Local 440; Allen grievance*, May 28, 1976. Majority: Ord, Spaxman — 11 pages; dissent: Furlong — one page. (21)

Failing to report for work when ordered: employer previously accepted later date for resumption of work following illness; suspension substituted. *Re Gabriel of Canada Limited and International Association of Machinists, Local 1295; Fraser grievance*, June 4, 1976. Majority: Andrews, Wren — seven pages; dissent: Healy — three pages. (22)

Falsification of pay records; grievance dismissed. *Re Hayes-Dana Limited and United Automobile Workers, Local 676; Delisle grievance*, July 5, 1976. Weatherill — five pages. (23)

Illness — inability to perform available work: grievor alleging violation of accrued seniority rights; grievance allowed. *Re Consolidated-Bathurst Packaging Limited and International Woodworkers of America, Local 2-69; Dastous grievance*, July 14, 1976, Bertuzzi, Seymour — eight pages; addendum: Bertuzzi — three pages. (24)

Incompetence alleged: cash shortages and inability to perform work; reinstatement with compensation. *Re National Motor Inn Limited and Hotel and Club Employees, Local 299; Skondras grievance*, June 30., 1976. Majority: Bigelow, Tate — eight pages; dissent: Bernardo; addendum: Tate — one page. (25)

Leaving the job — employer alleging quit; grievor leaving because of employer refusal to assign additional workers to complete shift complement; reinstatement without compensation. *Re Scarborough General Hospital and Canadian Union of Public Employees, Local 1487; Campbell grievance*, June 21, 1976. O'Shea, Acton, Riggs — eight pages. (26)

Possession and consumption of alcohol on company property. (1) *Re McLeod* — grievor controlling alcoholism; conditional reinstatement without compensation substituted. (2) *Re O'Reilly* — suspension upheld. *Re ESB Canada Limited and International Union of Electrical, Radio and Machine Workers, Local 512; McLeod, O'Reilly grievances*, July 15, 1976. Majority: Swan, Morley — 15 pages; dissent: Aslin — one page. (27)

Theft of company property — conduct and work record of grievor considered; suspension without compensation substituted. *Re Ontario Produce Company Limited and Warehousemen and Miscellaneous Drivers, Local 419; Colangelo grievance*, July 20, 1976. Majority: Shime, Robinson — 14 pages; dissent: Houck — two pages. (28)*

Unlawful work stoppage; employer giving special weight to grievor's position as union official; grievance allowed. *Re Patchogue Plymouth-Hawkesbury Mills Division of Amoco Canada Petroleum Company Limited and International Woodworkers of America; Parisien grievances*, February 17, 1976. Majority: Kates, Chalmers — 17 pages; dissent: Borden — 15 pages. (29)*

Unsatisfactory work performance: grievors alleging inadequate retraining opportunities to meet technological changes; grievances dismissed. *Re Council of Printing Industries of Canada and Toronto Typographical Union, Number 91; Mitchell, Bynoe grievances*, June 16, 1976. Majority: Brandt, Dinsdale — 14 pages; dissent: Longridge. (30)

Discipline

Absence from work: participation in protest march — whether absence on union business; grievances allowed in part. *Re Wheatley Manufacturing Division, International Tools (1973) Limited and United Automobile Workers, Locals 195, 252; Bell et al grievances*, June 30, 1976. McLaren — 23 pages. (31)*

Breach of safety regulations: responsibility of grievor for partner's decision to work on live equipment; grievance allowed. *Re Inco Limited and United Steelworkers, Local 6500; Ashick grievance*, July 29, 1976. Majority: Brown, Carriere — 14 pages; dissent: Sanderson — two pages. (32)

Employee evaluation critical of grievor placed on file: whether constituting disciplinary action; grievance not arbitrable. *Re Mount Sinai Hospital and Nurses' Association* — see (1), *supra*. (33)*

Insubordination: leaving work against orders; employer giving permission for one only of two union stewards to attend grievance meeting; grievances dismissed. *Re Inco Limited and United Steelworkers of America; Beaupre, Beauchamp grievances*, July 28, 1976. Majority: Weatherill, Sanderson — eight pages; dissent: Rouleau — one page. (34)

Insubordination: refusing to complete compulsory overtime; grievances allowed in part. *Re Hamilton Spectator and Graphic Arts Union, Local 669; Lightheart et al grievances*, July 26, 1976. Weatherill, Ladd, Clawson — 11 pages. (35)

Insubordination: refusing to follow instructions; grievor not undermining authority nor seriously delaying production; suspension reduced with compensation. *Re Livingston Industries Limited and International Woodworkers of America; Wolven grievance*, June 30, 1976. Majority: Weatherill, Sanderson — seven pages; dissent: Bédard; addendum: Sanderson — one page. (36)

Possession and consumption of alcohol on company property; suspension justified. *Re ESB Canada Limited and International Union of Electrical, Radio and Machine Workers* — see (27), *supra*. (37)

Refusing to obey foreman's instructions: grievor claiming safety considerations, but failing to obey instruction at first safe opportunity; grievance dismissed. *Re Monarch Fine Foods and Milk and Bread Drivers; Hatala grievance*, June 25, 1976. Majority: Brandt, MacDonald — 12 pages; dissent: Shields. (38)

Unsafe and unsatisfactory work performance: employer alleging failure to observe safety standards; grievance allowed. *Re Inco Limited and United Steelworkers of America; Grichen grievance*, June 30, 1976. Majority: Brown, Burrows — 17 pages; dissent: Keenan — three pages. (39)

Estoppel

Transfer of work to non-bargaining unit employees — previous grievance abandoned: collective agreement negotiated without change in company policy; grievance not arbitrable. *Re Niagara Falls Publishing Company Limited and Niagara Newspaper and Printing Guild, Local 12; union grievance*, July 19, 1976. Majority: Weatherill, Mathews — seven pages; dissent: Cooper — one page. (40)*

Evidence

Admissibility of extrinsic evidence: employer alleging ambiguity in collective agreement — interpretation regarding entitlement to sick pay; evidence not admissible. *Re Union Gas Limited and Oil, Chemical and Atomic Workers, Local 9-769; Parent grievance*, July 26, 1976. Majority interim award: Weatherill, White — 11 pages; dissent: Clark — two pages. (41)

Admissibility of extrinsic evidence: whether provision regarding pension enrollment ambiguous; objection sustained. *Re North York General Hospital and Ontario Nurses' Association; policy grievance*, July 26, 1976. Weatherill, Walsh, Sanderson — five pages. (42)

Grievance Procedure

Formal requirements: grievor failing to make written complaint at stage two; whether employer waived procedure by dealing with grievance; grievance dismissed. *Re Patterson Industries (Canada) Limited and United Steelworkers, Local 5482; Carey grievance*, February 20, 1976. Majority: Kates, Rovet — 15 pages; dissent: Fagan — two pages. (43)

Timeliness — continuing violation of agreement; preliminary objection dismissed. *Re Aldershot Contractors Equipment Rental Limited and International Union of Operating Engineers, Local 793; union grievance*, July 14, 1976. Brown, Kobryn, McKillop — eight pages. (44)

Timeliness: delay in filing grievance — grievor on lay-off unaware of circumstances giving rise to grievance; grievance arbitrable. *Re Aimco Industries Limited and United Automobile Workers, Local 199; Furry grievance*, June 22, 1976. McLaren — 14 pages. (45)*

Timeliness: delay of discharge grievance — misunderstanding between parties; no substantial prejudice to company — time limits extended; grievance arbitrable. *Re Colgate-Palmolive Limited and International Chemical Workers, Local 809; Dixon grievance*, July 12, 1976. Brown, Mathews, Ladd — 17 pages. (46)

Holiday Pay

Entitlement: grievor absent and receiving disability benefits — whether within exception to qualifying limitation; grievance allowed. *Re Hespeler-St. Mary's Wood Specialties Limited and International Woodworkers of America; Porter grievance*, July 26, 1976. Majority: Weatherill, Fagan — eight pages; dissent: Drmaj — two pages. (47)

Qualifying days — grievor on leave of absence before and after holidays; grievance dismissed. *Re Lux Time (Canada) Limited and United Automobile Workers; Visentin grievance*, July 7, 1976. O'Shea — nine pages. (48)

Qualifying days — grievor on leave of absence before and after holidays; grievance dismissed. *Re Lux Time (Canada) Limited and United Automobile Workers; Visentin grievance*, July 7, 1976. O'Shea — nine pages. (48)

Qualifying days: shift prior to holiday not worked on medical grounds — grievor failing to provide adequate certificate; grievance dismissed. *Re Hespeler-St. Mary's Wood Specialties Limited and International Woodworkers of America; Bowman grievance*, July 26, 1976. Majority: Weatherill, Drmaj — seven pages; dissent: Fagan — one page. (49)

Job Evaluation

Factors involved in ranking a job: onus on union to show factors graded in error; grievance dismissed. *Re Northern Electric Company Limited and Communication Workers of Canada; Bisschop grievance*, May 25, 1976. Ord — 21 pages. (50)

Lay-off

Employer selling part of business: whether employees affected were laid off and entitled to rely on seniority rights; grievances allowed by declaration. *Re Silverwood Dairies and Milk and Bread Drivers, Local 647; group grievance*, July 21, 1976. Majority: Weatherill, Thomson — nine pages; dissent: Mathews — four pages. (51)*

Grievor alleging violation of seniority rights: whether grievor qualified to perform work of junior employee; grievance dismissed. *Re GTE Automatic Electric (Canada) Limited and International Union of Electrical, Radio and Machine Workers, Local 526; Doxtater grievance*, July 29, 1976. Majority: Weatherill, Henderson — seven pages; dissent: Cornish — four pages. (52)

Inability to perform work: whether lay-off or discharge; lay-off found; propriety of lay-off to be dealt with in further hearing. *Re Howden Parsons Limited and International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers, Local 637; Prentice grievance*, July 22, 1976. Majority interim award: O'Shea, Cook — 11 pages; dissent: Schueler. (53)*

Leave of Absence

Employer refusing to grant leaves of absence to attend protest march: grievors claiming entitlement to leave for union business; absences found not to involve union business. *Re Wheatley Manufacturing Division, International Tools (1973) Limited and United Automobile Workers* — see (31), *supra*. (54)*

Management Rights

Promulgation of rules where collective agreement already containing rules — whether rules unreasonable or inconsistent with collective agreement; grievance dismissed. *Re Hiram Walker and Sons Limited and Canadian Union of Distillery Workers; policy grievance*, May 7, 1976, Rayner — six pages. (55)

Overtime

Existence of overtime: company following proper procedure for calling employees; grievance dismissed. *Re Calvert of Canada Limited and Distillery, Rectifying, Wine and Allied Workers, Local 73; Coyle grievance*, June 30, 1976. Majority: Weatherill, Clark — six pages; dissent: McConville. (56)

Premium Pay

Entitlement: change of shift by employer cutting short grievors' regularly scheduled week-end; grievances allowed. *Re Thompson Products Division of T.R.W. Canada Limited and Thompson Products Employees' Association; Discher et al grievances*, July 19, 1976. Majority: McCulloch, Tate — 17 pages; dissent: Clark — four pages. (57)

Promotion

Qualifications for promotion — company considering all applicants: whether qualifications approximately equal; grievance dismissed. *Re Atomic Energy of Canada Limited and Chalk River Nuclear Processor Operators, Local 1601; union grievance*, July 19, 1976. Majority: Weatherill, Clark — seven pages; dissent: Simon. (58)

Qualifications for promotion: employer failing to give senior employee opportunity to perform job; grievance allowed. *Re Royal Industries Certified Division and United Steelworkers of America; Papandrea grievance*, July 15, 1976. Majority: Ferguson, Signoretti — eight pages; dissent: Getzler — two pages. (59)

Qualifications for promotion — employer promoting employee junior to grievor: grievor alleging equal qualifications; grievance dismissed. *Re Greening Donald Limited and United Steelworkers, Local 3325; Cicci grievance*, July 14, 1976. O'Shea, Byers, Stetson — nine pages. (60)

Qualifications for promotion: whether grievor capable of being trained for job posted; grievance dismissed. *Re Canadian Admiral Corporation Limited and International Union of Electrical, Radio and Machine Workers, Local 545; Hawkes grievance*, July 23, 1976. Majority: Ferguson, Pyle — 26 pages; dissent: MacDowell — 14 pages. (61)

Qualifications for promotion: whether reasonable consideration given to grievor's qualifications; grievance allowed. *Re Eddy Forest Products Limited and Lumber and Sawmill Workers, Local 2693 (Carpenters); Mymka grievance*, April 28, 1976. Majority: Lunney, Wren — 15 pages; did not concur: Werry. (62)

Recall

Seniority: junior employee recalled after lay-off before grievor; grievance allowed. *Re Aimco Industries Limited and United Automobile Workers* — see (45), *supra*. (63)*

Seniority

Lay-off: interpretation of plant-wide and department-wide seniority provisions; grievances dismissed. *Re Omstead Foods Limited and Teamsters Union, Local 880; Fidalgo, et al grievances*, June 26, 1976. Majority: Stewart, Bartlet — ten pages; did not concur: Kobryn. (64)

Recall: loss of accumulated service credits due to absence from work; grievance dismissed. *Re Canadian General Electric Company Limited and United Electrical, Radio and Machine Workers, Local 526; Morton grievance*, June 29, 1976. Majority: O'Shea, Byers — 14 pages; did not concur: Wren. (65)

Company failing to take reasonable steps to comply with responsibility of assigning work in accordance with seniority; grievances allowed. *Re Overland-Western Limited and Teamsters Union, Local 141; Perry, MacIntyre grievances*, June 30, 1976. Majority: Ferguson, Kobryn — 11 pages; dissent: Singleton — one page. (66)

Qualifications where lay-off: supervisory employee returning to bargaining unit as temporary employee; entitlement to bump permanent incumbents; grievances upheld. *Re Burlington Steel Division of Slater Steel Industries Limited and United Steelworkers, Local 4752; Morrow, Montague, group grievances*, July 28, 1976. Kates — 21 pages. (67)

Sick Pay

Entitlement to long term disability benefits: "disability" including both physical and mental elements; grievances allowed. *Re GTE Automatic Electric (Canada) Limited and International Union of Electrical, Radio and Machine Workers, Local 526; Phillips, Kirby grievances*, July 9, 1976. Simmons, Henderson, Fraser — eight pages. (68)

Termination

Grievor absent from work: whether grievor discharged and entitled to notice; termination not found to be "discharge". *Re Steel Company of Canada Limited and United Steelworkers, Local 3767; McCartney grievance*, July 5, 1976. Majority interim award: O'Shea, Morley — 12 pages; dissent: Waisglass — two pages. (69)*

Transfer

Qualifications to full temporary vacancy: consideration of preference to be given senior employee; grievance dismissed. *Re Regional Municipality of Niagara and Canadian Union of Public Employees, Local 1287; Johnston grievance*, July 26, 1976. Majority: Weatherill, Pyle — nine pages; dissent: Keck. (70)*

Processing of transfer application: union failing to establish that employer did not process according to collective agreement; grievance dismissed. *Re Inco Limited and United Steelworkers, Local 6500; Sauve grievance*, June 24, 1976. Majority: O'Shea, Stone — five pages; did not concur: Signoretti. (71)

Temporary transfer alleged: grievor claiming higher rate of pay; grievance allowed. *Re R. Huber and Company (Canada) Limited and International Woodworkers of America; Zamora grievance*, July 13, 1976. Kates, Griffith, Purdy — 21 pages. (72)

Union Officials

Discharge: grievor disciplined more severely for participation in unlawful work stoppage because of official union position; grievance allowed. *Re Patchogue Plymouth — Hawkesbury Mills Division of Amoco Canada Petroleum Company Limited and International Woodworkers* — see (29), *supra*. (73)*

Union Rights

Collective agreement permitting refusal to perform "struck work": work from struck plant transferred at customer's request; grievance allowed. *Re Southam Murray and Printing and Graphic Communications Union, Local N-1; policy grievance*, June 30, 1976. Ferguson, F. Smith, R.C. Smith — nine pages; addendum: F. Smith — one page. (74)

Union Security

Compulsory union membership: employee performing apprentice functions; grievance allowed. *Re Albert's Kosher Meat Market and Canadian Food and Allied Workers, Local 633; Munro grievance*, June 22, 1976. Majority: Linden, Simon — five pages; did not concur: Lascow. (75)

Job vacancy: union refusing work permit to foreign employee — employer alleging no suitable resident available; grievance allowed. *Re W.B. Doner and Company and Association of Canadian Television and Radio Artists; company grievance*; June 14, 1976. Kates — 44 pages. (76)

Vacation Pay

Entitlement to vacation pay credit while on disability benefits: whether entitlement includes period of legal strike by union; grievance allowed. *Re Prestolite Company and United Automobile Workers, Local 456; Stevens grievance*, June 10, 1976. Ord — nine pages. (77)

Wages

Applicable rate during inventory — grievors previously outside bargaining unit: whether past practice excludes application of collective agreement provisions; grievances dismissed. *Re Sunbeam Corporation (Canada) Limited and Federal Labour Union 24762; Briffa et al grievances*, July 23, 1976. Majority: Ferguson, Heather — eight pages; dissent: Simon. (78)

Cost of living allowance; implementation of previous award following production of company records. *Re Harry Woods Transport Limited and Teamsters Union, Local 141; union grievance*, July 21, 1976. Rose, Dawson, Kobryn — six pages. (79)

Entitlement to automatic short week benefits: employees failing to satisfy all conditions of eligibility; grievance dismissed. *Re International Harvester Company of Canada Limited and United Automobile Workers, Local 127; union grievance*, July 13, 1976. Hinnegan — ten pages. (80)

Incentive programme: employer removing job from incentive programme unilaterally; grievance allowed. *Re Aoco Limited and United Rubber Workers, Local 411; union grievance*, July 5, 1976. O'Shea, Bruder, Payette — nine pages. (81)

Incentive rates: method of payment for scrap castings not caused by defective workmanship; grievance allowed. *Re Aimco Industries Limited and United Automobile Workers, Local 199; grievance 148, unnamed grievors*, July 12, 1976. Weatherill — eight pages. (82)

Rate classification: work-load increasing following installation of new machine; classification upgrade granted. *Re Dow Chemical Company of Canada Limited and Printing Specialties and Paper Products Union; union grievance*, June 18, 1976. Majority: McCulloch, Tate — 14 pages; dissent: Mathews — three pages. (83)

Service review date: whether previous part-time employment counting toward increment level; grievance dismissed. *Re Scarborough General Hospital and Ontario Nurses' Association, Local 111; Side grievance*, July 29, 1976. Brown, Walsh, Riggs — six pages. (84)

Welfare Plans

Dental benefit trust fund — management of fund; merits of proposal to improve plan. *Re Dominion Stores Limited et al and Retail, Wholesale and Department Store Union, et al; Ontario Retail Employees Dental Benefit Trust Fund trustees' arbitration*, July 8, 1976. Brown — eight pages. (85)

Entitlement: employer agreeing to arrange for and pay cost of indemnity plan, not provide benefits; grievor claiming against employer when cut off; grievance dismissed. *Re GSW Appliances Limited and United Steelworkers, Local 3129; Bellisario grievance*, July 16, 1976. O'Shea — 13 pages. (86)

Entitlement of deceased employee's estate to life insurance benefits: employee failing to complete required length of service; grievance dismissed. *Re Firestone Canada Limited/Limitée and United Rubber Workers, Local 113; policy grievance*, July 12, 1976. Majority: Weatherill, Clawson — ten pages; did not concur: Walsh. (87)

Entitlement to benefits: employer incorrectly informing insurer of grievor's date of return to work; grievance allowed. *Re Orenstein and Koppel Canada Limited and International Association of Machinists* — see (2), (13), *supra*. (88)*

Entitlement to disability benefits — requirements of insurance programme met: employer not accepting medical certificate; grievance allowed. *Re International Harvester Company of Canada Limited and United Automobile Workers; Davis grievance*, July 9, 1976. O'Connor — eight pages. (89)

The awards may be seen at the office of the Commission, 400 University Avenue, 14th floor, Toronto. Copies of awards may be obtained for a fee of 50 cents per page. Orders will be filled on receipt of an application and a cheque or money order payable to the Treasurer of Ontario for the applicable amount, which should be forwarded to: Cashier's Office, Ministry of Labour, 400 University Avenue, Toronto, Ontario M7A 1V6.

Filing Awards

The attention of chairmen of boards of arbitration and sole arbitrators is drawn to the provision of Section 6(2) of the Regulation, which reads: 6.—(2) Every arbitrator shall, within ten days of issuing an award, file a copy thereof with the Commission. This provision would apply to all arbitrators approved under The Ontario Labour-Management Arbitration Commission Act and regardless of whether they were appointed as chairmen or sole arbitrators pursuant to the Act, by the parties or by the Minister.

Mailing List

The Commission is preparing a comprehensive mailing list of persons interested in receiving the monthly Bulletin.

Anyone who wishes to be added to the list should write to the Commission stating the number of copies required.

Monthly Bulletin



The Ontario Labour-Management
Arbitration Commission

His Honour Judge Walter Little, Chairman
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Hon. Bette Stephenson, M.D., Minister
T.E. Armstrong, QC, Deputy Minister

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Arbitrators

The following person has been approved as chairman of boards of arbitration or single arbitrator pursuant to The Ontario Labour-Management Arbitration Commission Act and Ontario Regulation 635:

Robert Davidson, 8 Godstone Road, Apartment 1409, Willowdale, Ontario, M2J 3C4; telephone (416) 497-0166. (For arbitration cases under The Hospital Labour Disputes Arbitration Act).

Change of Address and Telephone Number

The following change should be noted, effective immediately:

Judge O.J. Godin, 6 Belanger Street, P.O. Box 141, Verner, Ontario, P0H 2M0; telephone (705) 594-2884.

Mr. Eugene H. Zimmerman has been appointed Adjunct Professor of Administrative Studies, Atkinson College, York University.

Notice of Retirement

Judge J.A. Hanrahan has retired from the Commission's arbitration panel at his own request. The Chairman, on behalf of the Commission, has expressed the appreciation of the Ministry of Labour and Judge Hanrahan's many associates, for the contribution he has made to both the conciliation and arbitration process over the years.

Awards

The following awards were filed with the Commission during the month of October, 1977, under Section 6(2) of Ontario Regulation 635, R.R.O. 1970.

The summary was prepared at the Faculty of Law, Queen's University, under the supervision of C.G. Simmons, B.A., B.C.L., LL.M., and R.S. Irwin, B.A., LL.M.

*Indicates award to be reported in full or in part in Labour Arbitration Cases.

Arbitrability

Classification — employer claiming improper classification grievance not arbitrable unless there is an employee in that position; grievances arbitrable. *Re Kingston, Corporation of the City of and Canadian Union of Public Employees, Local 141; policy grievances*, October 11, 1977. Simmons — seven pages. (1)

Prior settlement — employer alleging discharge grievance settled along with two other grievances; grievance not arbitrable. *Re Tamblyn Limited and Retail Clerks Union, Local 206; Grimberger grievance*, September 23, 1977. Gorsky, Piroth, Strickland — ten pages. (2)

Board of Arbitration

Jurisdiction to make order other than that sought in grievance: union seeking order that task belongs to a member of the bargaining unit where grievance claimed talk was confined to the duties of a particular job; jurisdiction denied. *Re Kapuskasing, Corporation of the Town of and Canadian Union of Public Employees, Local 369; policy grievance*, October 20, 1977. Dunn, Brillinger, DeGurse — three pages. (3)

Bereavement Leave

Bereavement occurring during vacation period; grievance allowed. *Re Sklar Furniture Limited and Upholsterers' International Union of North America, Local 50; group grievance*, October 7, 1977. Brown — six pages. (4)*

Classification

Improper classification alleged: whether grievor possessing qualifications required of higher classification; whether performing essential work of higher classification; grievance dismissed. *Re Dorr-Oliver-Long Limited and United Steelworkers of America, Local 4697; Singh grievance*, October 17, 1977. Majority: Johnson, Werry — seven pages; dissent: Drew. (5)

Contracting Out

Use of employment agency — employer contracting with agency for services of individual; whether individual should be treated as member of bargaining unit; grievance allowed. *Re Waterloo, Regional Municipality of and London and District Service Workers' Union, Local 220; policy grievance*, October 12, 1977. Brandt, Sanderson, Switzman — eight pages. (6)*

Discharge

Absence without reasonable excuse: grievor on sick leave not returning to work as quickly as possible; grievor unaware that doctor satisfied of his fitness; grievance dismissed. *Re Algoma Steel Corporation Limited and United Steelworkers of America; Bruni grievance*, September 8, 1977. Majority: Rayner, Storie — five pages; dissent: Munro — three pages. (7)

Culminating incident: failure to report for work as driver in bad weather conditions; grievance dismissed. *Re General Bakeries Limited and Retail, Wholesale and Department Store Union, Local 461; Robb grievance*, October 3, 1977. Swan, Weisbach, Smith — ten pages. (8)

Culminating incident — refusal to follow order of supervisor; whether refusal motivated by legitimate concern for health; grievance allowed in part. *Re Central Park Lodges of Canada and Service Employees International Union, Local 204; Smith grievance*, October 4, 1977. Baum, Tarasuk, Hamilton — ten pages; appendix — one page. (9)

Failure to pass apprenticeship examination — grievor not fully aware of implications of failure or precise scope of examination; reinstatement with compensation. *Re Ontario Hydro and Canadian Union of Operating Engineers; Sangster grievance*, October 18, 1977. Majority: Weatherill, Gilbert — six pages; dissent: Gretton. (10)

Falsification of medical record at time of hiring; grievance dismissed. *Re Dayton Tire Canada Limited and United Rubber, Cork, Linoleum and Plastic Workers of America; Humphries grievance*, September 13, 1977. Majority: Rayner, Sanderson — five pages; dissent: Bruder. (11)

Harassment of supervisor — grievor while on layoff and upon being recalled to lower position phoning supervisor anonymously at night; grievance dismissed. *Re Sensenbrenner Hospital and Service Employees Union, Local 478; Coffey grievance*, October 15, 1977. Majority: McLaren, McElhanney — 15 pages; dissent: Wren — five pages. (12)

Incompetence and negligence in performance of duties; grievance dismissed. *Re Columbus McKinnon Limited and United Automobile Workers, Local 1629; Smith grievance*, October 5, 1977. Rayner — seven pages. (13)

Insubordination: alleged refusal to follow orders of foreman; grievance ~~dismissed~~ ^{allowed}. *Re White Farm Equipment (Canada) and United Automobile Workers of America, Local 458; Wilson grievance*, October 24, 1977. Brown — 13 pages. (14)

Intoxication on the job: grievor operating machinery improperly; grievance dismissed. *Re A. Schulman Canada Limited and International Chemical Workers Union, Local 969; Wilmott grievance*, October 3, 1977. Majority: O'Shea, Churchmuch — nine pages; dissent: Phillips. (15)

Non-disciplinary termination: grievor absent from work for more than twelve months due to medical disability; grievance dismissed. *Re The Steel Company of Canada Limited, Frost Works and United Steelworkers of America, Local 3561; Lavigne grievance*, September 26, 1977. Brown, Morgan, Storie — 11 pages. (16)

Soliciting of gratuity from customer in contravention of company policy; whether penalty excessive; suspension substituted. *Re C.N. Tower Restaurants Limited and Canadian Brotherhood of Railway, Transport and General Workers; Ravera grievance*, October 25, 1977. Burkett — 12 pages. (17)

Unlawful strike — grievor the instigator and president of the local; grievance dismissed. *Re Liquid Carbonic Canada Limited and United Steelworkers of America, Local 12998; Gibbons grievance*, October 18, 1977. Majority: Kennedy, MacDonald — 12 pages; dissenting in part: Penny — one page. (18)*

Unlawful strike — grievor with instigator at beginning of strike, mere passive acquiescence in decision; suspension substituted. *Re Liquid Carbonic Canada Limited and United Steelworkers of America, Local 12998; McNeil grievance* — see (18), *supra*. (19)*

Unlawful strike — grievor arriving after strike begin and actively assisting to organize in early stages; grievance dismissed. *Re Liquid Carbonic Canada Limited and United Steelworkers of America, Local 12998; Stokes grievance* — see (18), *supra*. (20)*

Unsatisfactory work performance alleged: whether employer providing proper instructions for the job; grievance allowed. *Re United Tire and Rubber Manufacturing (Toronto) Limited and United Rubber, Cork, Linoleum and Plastics Workers of America, Local 973; Keal grievance*, October 24, 1977. Anderson — eight pages. (21)

Violation of company rules: grievor deliberately discharging fire extinguisher at another employee while engaging in horseplay; grievance dismissed. *Re Livingston Industries Limited and International Woodworkers of America; Littlejohn grievance*, October 17, 1977. Majority: O'Shea, Filion — 13 pages; dissent: Bedard. (22)

Discipline

Absenteeism — grievor participating in "day of protest" and accumulating excessive demerit points in disciplinary system; term of suspension reduced. *Re Nelson Crushed Stone Division of King Paving and Materials Division of the Flintkote Company of Canada Limited and United Cement, Lime and Gypsum Workers International Union, Local 494; Morrison grievance*, October 19, 1977. Majority: Weatherill, Cosburn — eight pages; dissent: Bekerman. (23)

Carelessness alleged — grievor damaging employer's vehicle while driving; mitigating circumstances; grievance allowed in part. *Re Sensenbrenner Hospital and Service Employees Union, Local 478; Levesque grievance*, October 12, 1977. McLaren, Wren, McElhanney — six pages. (24)

Failure to complete day's assignment as instructed because of tardiness; grievance dismissed. *Re The International Nickel Company of Canada Limited and United Steelworkers of America; Huard and Drover grievances*, October 17, 1977. Majority: Shime, Simpson — ten pages; dissent: Carriere. (25)

Grievor calling unlawful work stoppage: alleged working conditions constituting hazard to health and in violation of *Industrial Safety Act*; grievance dismissed. *Re Burns Foods Limited and Canadian Food and Allied Workers; Prince grievance*, October 26, 1977. Majority: Burkett, Dinsdale — 18 pages; dissent: Walsh — one page. (26)*

Grievors in possession of alcohol in plant during working hours; grievances dismissed. *Re Alcan Canada Foils and Metal Foil Workers Union; Wilson, Simmons and Lambert grievances*, September 8, 1977. Majority: Rayner, Whittaker — eight pages; dissent: Weisbach — two pages. (27)

Insubordination — grievor being disrespectful and using foul language when asked by supervisor to return to proper work area; grievance dismissed. *Re Northern Telecom Limited and United Electrical, Radio and Machine Workers of America, Local 531; Thorne grievance*, October 19, 1977. O'Connor — 11 pages. (28)

Insubordination: grievor refusing to perform work on specific machine and threatening supervisor; whether threats justified by prior antagonism; grievance allowed in part. *Re Reed Limited Furniture Division and Canadian Union of Industrial Employees; Manzano grievance*, October 18, 1977. Majority: Kennedy, Cornish — 12 pages; dissent: Cook — three pages. (29)

Throwing water on fellow employee — failure to prove grievor the offender; grievance allowed. *Re Inco Metal Limited and United Steelworkers of America, Local 6500; Watier grievance*, October 5, 1977. Simmons, Carriere, Fortier — seven pages. (30)

Work assignment: grievors refusing to do work which not required of them in operational practice; grievances allowed.

Re Overland Western Limited and Teamsters Union, Local 938; Macdonald et al grievances, September 27, 1977.

Majority: O'Shea, Paliare — 16 pages; dissent: Kennedy. (31)

Evidence

Admissibility — contemporaneous notes referred to by a witness prior to a hearing to refresh memory ordered produced. *Re Liquid Carbonic Canada Limited and United Steelworkers of America, Local 12998* — see (18), *supra*. (32)*

Grievance Procedure

Extension of time limits: union sloppiness resulting in missing of time limit; whether Board should exercise statutory discretion to relieve; grievance dismissed. *Re Toronto, Corporation of the City of and Canadian Union of Public Employees, Toronto Civic Employees, Local 43; McLellan grievance, August 23, 1977.* Majority: Abbott, Paulin — 13 pages; dissent: Tate — four pages. (33)*

Holiday Pay

Election of day off with pay — grievor claiming right to election despite not having worked on holiday due to sickness; grievance dismissed. *Re Sudbury General Hospital of the Immaculate Heart of Mary and Ontario Nurses' Association; Miller grievance, September 21, 1977.* Majority: Fraser, Walsh — nine pages; dissent: Gretton — one page. (34)

Rate: grievors temporarily working in higher classification claiming entitlement to holiday pay at higher rate; grievances allowed. *Re The Toronto Star Newspapers Limited and The Toronto Newspaper Guild; Strachan and Logan grievances, September 23, 1977.* McCulloch — ten pages. (35)

Whether employer having right to unilaterally set-off holiday pay to which employee entitled against a day's pay alleged owed by employee to company; grievance allowed. *Re The Brantford Expositor and Toronto Newspaper Guild, Brantford Unit Local 87; Mawson grievance, October 20, 1977.* Majority: Rubenstein, Tate — ten pages; dissent: Clawson — two pages. (36)

Job Posting

Employer not posting inspector's job; job previously performed by outside worker now performed by foreman; whether job now within bargaining unit so as to require posting; grievance dismissed. *Re Bomac Steel Company Limited and United Steelworkers of America; Ariganello grievance, September 30, 1977.* Brown, Lyons, Stringer — five pages. (37)

Existence of vacancy — whether adequate work to justify filling position of retiring employee; grievance dismissed. *Re Fleet Manufacturing Limited and I.A.M., Lodge 171; policy grievance, June 1977.* Rayner, Marchand, Wren — five pages. (38)

Grievor denied posted job for which he had applied — whether possessing required qualifications; grievance dismissed. *Re Renfrew, The Corporation of the County of and Canadian Union of Public Employees, Local 1508; Riley grievance, October 20, 1977.* Weatherill, Henry, Sirois — five pages. (39)

Supplementary information — company removing notice posted by union in reference to posted job; whether company in violation of agreement; grievance allowed. *Re The Railway Association of Canada and Division No. 4, Railway Employees' Department; policy grievance, October 17, 1977.* Weatherill — seven pages. (40)

Job Vacancy

Existence: whether temporary transfers into certain job indicated job vacancy; grievance dismissed. *Re Eaton Yale Limited and United Automobile Workers, Local 127; policy grievance, September 21, 1977.* Rayner — five pages. (41)

Lay-Off

Improper lay-off alleged while contractor performing work for employer — agreement prohibiting lay-offs due to employer entering a "Works Contract"; grievances dismissed. *Re Kapuskasing, The Corporation of the Town of and Canadian Union of Public Employees, Local 369; Yelle, Gale, Bourgelas and Lamontague grievances, October 20, 1977.* Dunn, Brillinger, DeGurse — four pages. (42)

Qualifications and ability to perform available work: grievor on lay-off when junior employee recalled; grievor able to perform work only with occasional assistance because of previous back injury; grievance dismissed. *Re Marentette Brothers Limited and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 880; Bondy grievance, September 28, 1977.* Majority: McLaren, Kobryn — 11 pages; dissent: Marentette — one page. (43)

Whether company work allocation while grievors laid off justified by operational practice; grievances dismissed. *Re Hutton Transport Limited and Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 141; Tazzman, Johnston and Mustard grievances*, September 27, 1977. Majority: McLaren, Filion — 14 pages; dissent: Kobryn — four pages. (44)

Work available — grievor laid off while junior employees retained; whether grievor capable of performing available work; grievance dismissed. *Re Charles Wilson Limited and Canadian Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers; Italiano grievance*, September 30, 1977. Brunner, McKillop, Green — seven pages; addendum: Green — one page. (45)

Management Rights

Employer requiring grievor to sign form stating reason for absence from work; agreement providing for rules relating to absences, and penalties for non-compliance allowed. *Re Thibodeau-Finch Express Limited and Teamsters, Chauffeurs, Warehousemen and Helpers Union, Local 880; Dennis grievance*, September 12, 1977. Majority: Stewart, Kobryn — 11 pages; dissent: Linder. (46)

Overtime

Calculation of number of days worked — grievors claiming that sick days and day off where compressed work week be included in determining whether maximum exceeded; grievance dismissed. *Re Humber College and Ontario Public Service Employees Union; group grievance*, September 27, 1977. Majority: Rayner, Correll — seven pages; dissent: Switzman. (47)

Distribution — grievors claiming overtime job assigned wrongly to employees not normally performing the work; grievance dismissed. *Re Falconbridge Nickel Mines Limited and Sudbury Mine, Mill and Smelter Workers Union, Local 598; Papp and Collins grievances*, October 17, 1977. Brown — 12 pages. (48)

Distribution: grievor denied opportunity to perform overtime work; employer determining overtime required could be performed by worker in another classification; grievance allowed. *Re Eaton Yale Limited and United Automobile Workers, Local 127; Walker grievance*, September 2, 1977. Rayner — six pages. (49)

Distribution — improperly assigned to employees not normally performing the work in question; grievance allowed. *Re Northern Telecom Limited and United Automobile Workers, Local 27; representative grievance*, October 4, 1977. Rayner — six pages. (50)

Overtime Pay

Whether refusal to work overtime when offered extinguished right to overtime pay when work done by others; grievances dismissed. *Re Kingston, Corporation of the City of and Canadian Union of Public Employees, Local 109; group grievance*, September 29, 1977. Simmons — 12 pages. (51)*

Premium Pay

Calculation of shift premium — union claiming premium should be added to basic hourly rate before overtime calculated; grievance dismissed. *Re Nelson Crushed Stone Division of King Paving and Materials Division of the Flintkote Company of Canada Limited and United Cement, Lime and Gypsum Workers International Union, Local 494; policy grievance*, October 19, 1977. Majority: Weatherill, Cosburn — five pages; dissent: Bekerman. (52)

Grievors performing two jobs for which wage premiums are provided claiming entitlement to both premiums; grievance allowed. *Re Standard Tube Canada Limited and United Automobile Workers, Local 1965; group grievance*, October 6, 1977. Rayner — four pages. (53)

Probationary Employee

Discharge: employer terminating grievor before expiry of probationary period; grievor claiming previous part-time employment to be included in determining seniority rights; grievance dismissed. *Re Children's Aid Society of Ottawa and Ontario Public Service Employees Union; Menu grievance*, September 26, 1977. Majority: O'Shea, Bertuzzi — 23 pages; dissent: Cochrane — three pages. (54)

Promotion

Two employees agreeing to swap positions at request of company: whether job vacancies created by such transfer so that promotion provisions in collective agreement applicable; whether transfer to a lower rated job could constitute a "promotion"; grievance allowed. *Re Dominion Stores Limited and Retail, Wholesale and Department Store Union, Local 414; Lapierre grievance*, October 20, 1977. Majority: O'Shea, Dahmer — 11 pages; dissent: White — three pages. (55)

Whether included in term "hired"; grievance allowed. *Re Ontario Federation of Labour and Office and Professional Employees International Union, Local 343; Forder grievance*, October 4, 1977. Adams — 22 pages. (56)*

Seniority

Retention on promotion — union grieving against retention of seniority by employees returning to the unit after having been promoted out of the unit to another plant of the employer; grievance dismissed. *Re Sklar Furniture Limited and Upholsterers' International Union of North America, Local 50; union grievance*, October 7, 1977. Brown — 12 pages. (57)*

Return to bargaining unit with full seniority following period of promotion: union objecting to employee returning exercising bumping rights within unit; whether returning employee obliged to exercise seniority through job posting process; grievance allowed. *Re Northern Telecom Limited and United Electrical, Radio and Machine Workers of America, Local 531; policy grievance*, October 4, 1977. Dunn — five pages. (58)

Rights to recall: grievor failing to produce evidence of seniority; grievor claiming entitlement to trial period based on seniority alone in order to determine whether he has the required skills and ability; grievance dismissed. *Re Honeywell Limited and United Automobile Workers of America, Local 80; Hadley grievance*, September 21, 1977. Majority: Beck, White — ten pages; dissent: Hand — two pages. (59)

Sick Pay

Eligibility — grievor claiming sick pay for holiday when she was scheduled to work; grievance allowed. *Re Sudbury General Hospital of the Immaculate Heart of Mary and Ontario Nurses' Association* — see (34) *supra*. (60)

Whether grievor fulfilled evidence requirements as to reason for absence and extent of illness to qualify for sick pay; grievance dismissed. *Re St. Jean De Brebeuf Hospital and Canadian Union of Public Employees, Local 1101; Shank grievance*, September 28, 1977. Swan — 15 pages. (61)*

Transfer

Seniority: grievor transferred to lower-rated job during slow period; grievor alleging higher-rated work being performed by junior employees; grievance dismissed. *Re Canadian General Electric Company Limited and International Union of Electrical, Radio, and Machine Workers, Local 544; Young grievance*, September 28, 1977. Majority: O'Shea, Tarasuk — 17 pages; dissent: Aslin — three pages. (62)

Vacations

Calculation of vacation credits — grievor in full-time unit claiming right to include service in part-time unit in calculating period of continuous service; grievance dismissed. *Re Scarborough General Hospital and Ontario Nurses' Association, Local 111; Lemick grievance*, September 30, 1977. Majority: Brown, Filion — nine pages; dissent: McIntyre — three pages. (63)*

Calculation of entitlement: employer not using anniversary date of employment as basis of calculation of holiday entitlement for all employees; whether agreement requiring uniform calculation; grievance allowed. *Re Canada Malting Limited and The Malt and Grain Process Workers, Local 281 and Canadian Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers; union grievance*, September 29, 1977. Brown — 11 pages. (64)

Entitlement — grievor seeking declaration of entitlement to four weeks vacation having completed three years of service at the date entitlement to be measured; grievance allowed. *Re The Salvation Army Grace Hospital and Ontario Nurses' Association; Primeau grievance*, October 12, 1977. Brown, Walsh, Sanderson — seven pages. (65)

Whether employer entitled to reduce vacation period of employee as a set-off against time not worked; grievance allowed. *Re The Brantford Expositor and Toronto Newspaper Guild* — see (36), *supra*. (66)

Wages

Calculation of retroactive pay: collective agreement providing that retroactive pay to be based on difference between new rates and previous rates for all hours worked; whether overtime and other premium hours worked to be included at premium rates or regular rates; grievance allowed. *Re Brampton, Corporation of the City of and Amalgamated Transit Union, Local 1573; Sim grievance*, October 17, 1977. Majority: Shime, Austin — seven pages; dissent: Filion — four pages. (67)

Entitlement to reporting pay — company announcing decision to close plant due to heavy snowfall by public radio; grievors not hearing announcement and reporting for work; grievance allowed. *Re Wabco Limited and United Electrical, Radio and Machine Workers of America, Local 558; group grievance*, October 3, 1977. Majority: O'Shea, Davidson — ten pages; dissent: Reeve. (68)

Entitlement to retroactive pay — time limits for application: whether grievor taking initiative to claim retroactive pay within prescribed time limits; employer receiving mailed claim after deadline; grievance allowed. *Re Abitibi Paper Company Limited, Iroquois Falls Division and United Brotherhood of Carpenters and Joiners of America, Local 2995; Marion grievance*, September 20, 1977. Brunner, Sutton, Wren — ten pages. (69)

Incentive standard — union disputing right of employer to set standard for particular part; whether part a new product or old product with new number; grievance allowed. *Re Sunbeam Corporation (Canada) Limited and Federal Labour Union 24762; Dyer grievance*, undated. Brunner, Heather, Simon — seven pages. (70)

Whether employee occasionally performing work outside his classification justifying higher rate of pay for those times; grievance allowed. *Re Canada Valve Limited and International Molders' and Allied Workers Union; Siebert grievance*, October 4, 1977. Majority: Burkett, Wohl — eight pages; dissent: Farrar — three pages. (71)*

Whether employee who ends employment while new contract being negotiated entitled to retroactive pay increase; grievance allowed in part. *Re Ontario Federation of Labour and Office and Professional Employees International Union, Local 343; Cosgrove grievance* — see (56), *supra*. (72)

Employer deducting pay from grievors unable to cross picket line of another unit; failure of employer to ensure their passage; grievance allowed. *Re Board of Trustees of the Roman Catholic Separate Schools for the City of Windsor and Service Employees Union, Local 210; union grievance*, undated. Majority: Ianni, Coburn — six pages; dissent: Gress — four pages. (73)*

Entitlement: collective agreement providing that on transfer to a lower paid job, employee to receive higher rate from old job for the first forty working days; whether "working days" meaning "an employee's working days" or "plant's working days"; grievance allowed. *Re Magline of Canada Limited and United Steelworkers of America, Local 8229; Remus grievance*, September 21, 1977. Whyte — 13 pages. (74)

Incentive pay — union claiming guaranteed rate of pay during period assembly line under time study; grievance allowed. *Re Beach Appliances International Limited and United Automobile Workers of America, Local 641; policy grievance*, September 26, 1977. Swan — 13 pages. (75)

Quarterly adjustments — union claiming entitlement for all employees rather than just those employed at time of ratification; grievance dismissed. *Re Susan Shoes Industries Limited and Boot and Shoe Workers Union; D'Amico grievance*, September 9, 1977. Majority: Burkett, Mitchnick — 13 pages; dissent: McCormick — four pages. (76)

Whether grievor had same "job" as another employee and entitled to an increase; grievance dismissed. *Re Falconbridge Nickel Mines Limited and United Steelworkers of America; Bidal grievance*, August 25, 1977. Majority: O'Shea, Gordon — nine pages; dissent: Seguin. (77)

Welfare Plans

Computation of retirement gratuity: whether years of service on which calculation based including service only with the Board and its predecessors or including total years service in the teaching profession; grievance dismissed. *Re Dufferin-Peel Roman Catholic Separate School Board and The Branch Affiliates O.E.C.T.A. and A.E.F.O.; Hosick grievance*, October 21, 1977. Majority: Kennedy, Sanderson — six pages; dissent: Bird — six pages. (78)

Entitlement: employees claiming supplementary unemployment benefits for time lost — employer closing factory due to effects of snow storm; benefits not payable where close-down due to "act of God"; grievance dismissed. *Re Inglis Limited and United Steelworkers of America, Local 2900; union grievance*, October 3, 1977. Weatherill — eight pages. (79)

Company formulating a contributory pension scheme — whether violation of collective agreement; grievance dismissed. *Re Reed Limited, Pigments Division and International Chemical Workers Union, Local 880; union grievance*, September 29, 1977. Majority: Weatherill, Easdale — seven pages; dissent: Hollins. (80)

Work Assignment

Bargaining unit work being performed by foreman; union claiming work be assigned to job position which had done duties; grievance dismissed. *Re Kapuskasing, The Corporation of the Town of and Canadian Union of Public Employees, Local 369* — see (3), *supra*. (81)

Duties of firefighters: grievors ordered to clear fire hydrants of snow for first time aside from in a fire situation; grievance dismissed. *Re Hamilton, The Corporation of the City of and The Hamilton Professional Firefighters Association, Local 288, International Association of Firefighters; policy grievance*, September 6, 1977. Brunner — 13 pages. (82)

The following awards in interest arbitrations under The Hospital Labour Disputes Arbitration Act were also filed with the Commission during the months of September and October, 1977.

The Willson Nursing Home Limited and London and District Service Workers Union, Local 220, Brown, Walsh — 13 pages; dissent: Perkins.

Heidehof Home for the Aged Owned and Operated by Benevolent Society Heidehof and Christian Labour Association of Canada, O'Connor, Carpenter, Vandezande — 38 pages.

Plainfield Children's Home and Boot and Shoe Workers' Union, Affiliated with the Canadian Labour Congress and AFL-CIO (Thurlow Township), Anderson, Pike, Nokes — six pages.

Thunder Bay Hospitals, St. Joseph General, Port Arthur General, McKellar General and Walter P. Hogarth Memorial Hospital and International Union of Operating Engineers, Local 865, Blair, Holt, Isbister — eight pages.

The Country Village Incorporated and Service Employees' Union, Local 210, Sheriff, Bartlet — 34 pages; partial dissent: Hughes — one page.

Kemptville District Hospital and International Union of Operating Engineers, Local 796, Abbott, Castonguay, Harnden — 32 pages.

Bestview Holdings Limited and Bestview Services Limited and Christian Labour Association of Canada, O'Donoghue — 14 pages, Schedule 1 — 19 pages, Schedule 2 — one page.

Sydenham District Hospital and Service Employees Union, Local 210, Ord, Binning, Walsh — six pages.

The awards may be seen at the office of the Commission, 400 University Avenue, 14th floor, Toronto. Copies of awards may be obtained for a fee of 50 cents per page. Orders will be filled on receipt of an application and a cheque or money order payable to the Treasurer of Ontario for the applicable amount, which should be forwarded to: Cashier's Office, Ministry of Labour, 400 University Avenue, Toronto, Ontario M7A 1V6.

Filing Awards

The attention of chairmen of boards of arbitration and sole arbitrators is drawn to the provision of Section 6(2) of the Regulation, which reads: 6.—(2) Every arbitrator shall, within ten days of issuing an award, file a copy thereof with the Commission. This provision would apply to all arbitrators approved under The Ontario Labour-Management Arbitration Commission Act and regardless of whether they were appointed as chairmen or sole arbitrators pursuant to the Act, by the parties or by the Minister.

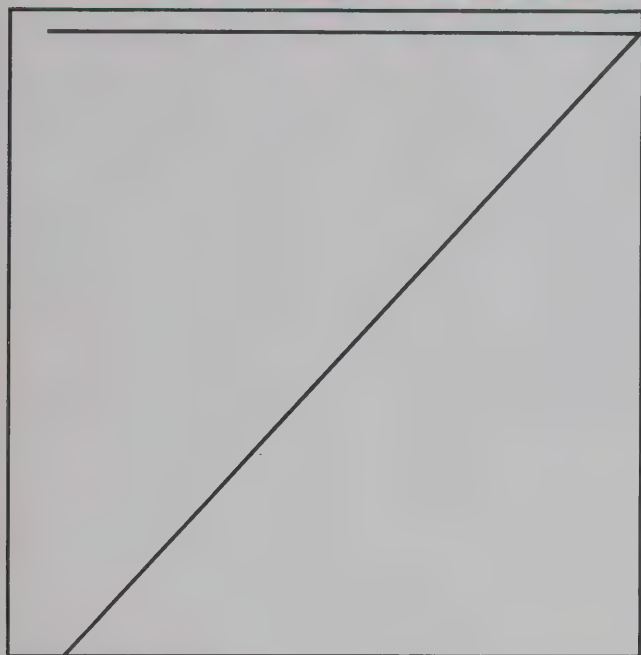
Mailing List

The Commission is preparing a comprehensive mailing list of persons interested in receiving the monthly Bulletin.

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Monthly Bulletin



The Ontario Labour-Management
Arbitration Commission

His Honour Judge Walter Little, Chairman
Dorothy M. Johnson, Registrar

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Hon. Bette Stephenson, M.D., Minister
T.E. Armstrong, QC, Deputy Minister

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arbitrations.



Ontario

Arbitrators

The following person has been approved as chairman of boards of arbitration or single arbitrator pursuant to The Ontario Labour-Management Arbitration Commission Act and Ontario Regulation 635:

Sidney B. Linden, Barrister and Solicitor, 390 Bay Street, Suite 1104, Toronto, Ontario, M5H 2Y2; telephone (416) 862-9020.

The qualifications of the following person are such that he meets the criteria laid down by the Commission, making him a suitable person to sit as sole arbitrator or chairman of boards of arbitration, except that the criterion of mutual acceptability to unions and management has not been fully demonstrated. Although he may have had arbitration experience, he has not been mutually agreed upon a sufficient number of times in the past to enable him to meet the foregoing criterion necessary to entitle him to be accredited for inclusion on panels. As soon as he meets this criterion he will be considered for full accreditation.

John S. Sheriff, 3139 Princess Boulevard, Burlington, Ontario, L7N 1G5; telephone (416) 632-4394. (For arbitration cases under The Hospital Labour Disputes Arbitration Act).

Awards

The following awards were filed with the Commission during the month of November, 1977, under Section 6(2) of Ontario Regulation 635, R.R.O. 1970.

The summary was prepared at the Faculty of Law, Queen's University, under the supervision of C.G. Simmons, B.A., B.C.L., LL.M., and R.S. Irwin, B.A., LL.M.

* Indicates award to be reported in full or in part in Labour Arbitration Cases.

Arbitrability

Alleged improper denial of moving expenses: subject matter of complaint not covered by agreement; grievance not arbitrable. *Re Her Majesty the Queen in Right of the Province of Ontario and Ontario Provincial Police Association, Incorporated; Zalman grievance*, November 7, 1977. Shime, Scott, Gray -- four pages. (1)

Alleged improper evaluation procedures -- evaluation and procedure for evaluation not dealt with in collective agreement; grievance not arbitrable. *Re Seneca College and Ontario Public Service Employees Union; group grievance*, November 11, 1977. Majority: Brown, Clawson -- 11 pages; dissent: Stanley -- one page. (2)

Non-bargaining unit employees -- collective agreement conferring benefits on such employees; whether union can enforce agreement on their behalf; grievance arbitrable. *Re Victoria Hospital Corporation and London and District Service Workers Union, Local 220; policy grievance*, November 22, 1977. Majority: Brown, Walsh -- 13 pages; dissent: Paulin -- four pages. (3)*

Bereavement Leave

Alleged improper denial of bereavement leave: company taking into consideration grievor's entitlement to regular days off and statutory holiday during period immediately following bereavement in determining length of leave to be granted; grievance dismissed. *Re Her Majesty the Queen in Right of the Province of Ontario and Ontario Provincial Police Association, Incorporated; Stanford grievance*, November 7, 1977. Shime, Scott, Gray -- nine pages. (4)*

Board of Arbitration

Procedure: grievors seeking separate representation by their own counsel: whether sufficient conflict between union position and that of the grievors to justify independent representation; separate counsel not allowed. *Re Canada Packers Limited and Canadian Food and Allied Workers, Local P114; VanEenooghe, Mair grievances*, May 19, 1977. Interim awards: Ord, Williamson, Walsh -- 11 pages. (5)*

Classification

Job description -- whether work required under revised job description significantly different from that required before revision such that a classification change required; grievance dismissed. *Re Orenstein and Koppel Canada Limited and The International Association of Machinists and Aerospace Workers, Local 1740; Cook grievance*, October 31, 1977. Majority: A.M. Linden, McNaughton -- nine pages; dissent: Tate -- four pages. (6)

Contracting Out

Distribution contract: employer switching method of delivery outside of city from air freight to trucking contract; union alleging bargaining unit work contracted out; grievance allowed. *Re Toronto Star Limited and The Toronto Newspaper Guild, Local 87; union grievance*, undated. Brunner, Tate, Winkler -- 13 pages; addendum: Tate -- one page. (7)

Cost of Living Allowance

Entitlement -- company refusing to pay because of Anti-Inflation Board guidelines; whether Arbitration Board has jurisdiction to order compliance with C.O.L.A. contrary to Anti-Inflation Board decision; grievance allowed in part. *Re Toronto-Dominion Centre Limited Operating Division and International Union of Operating Engineers, Local 796; policy grievance*, October 31, 1977. O'Shea, Wakely, Ball -- seven pages. (8)

Demotion

Ability to perform job -- grievor experiencing difficulty with abusive patient; employer demoting grievor to job involving no contact with public; grievance allowed in part. *Re Toronto East General and Orthopaedic Hospital Incorporated and Service Employees Union, Local 204; McNeil grievance*, November 25, 1977. Brent, Wakely, Simon -- seven pages; addendum: Wakely -- four pages. (9)

Carelessness: grievor having a number of serious accidents as truck driver; grievance dismissed. *Re Newman Steel Warehouse Limited and United Steelworkers of America, Local 8214; Smith grievance*, October 27, 1977. O'Shea -- 11 pages. (10)*

Grievor demoted from Principal status to Teacher status: whether on probationary status at time of demotion; grievance allowed. *Re Essex County Roman Catholic Separate School Board and Essex County Separate School Teachers' Association; Laforet grievance*, November 8, 1977. Hinnegan, Ouellette, Koskie -- 13 pages. (11)

Discharge

Alleged violations of procedures governing serving of drinks and receipt of payment therefor; suspension substituted. *Re The Four Seasons Hotel, Ottawa and The Hotels, Clubs, Restaurants, Taverns Employees Union, Local 261; Tang grievance*, November 15, 1977. Majority: Curtis, Bishop -- 12 pages; dissent: Chadwick -- four pages. (12)

Assault: grievor assaulting supervisor without provocation; whether grievor likely to behave similarly in future; grievance dismissed. *Re American Can of Canada Limited and Can Workers Federal Union, Locals 353, 354 and 535; Shoff grievance*, November 24, 1977. Majority: O'Shea, Rusak -- 26 pages; dissent: Biggs. (13)*

Assault: grievor deliberately hitting fellow employee without being provoked; grievance dismissed. *Re Caterpillar of Canada Limited and International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, Local 252; Randell grievance*, October 24, 1977. Majority: O'Shea, Wakely — 14 pages; dissent: Cooper — two pages. (14)

Carelessness: engine of school bus driven by grievor suffering serious damage; whether grievor could have prevented damage; grievance dismissed. *Re Hanmer Bus Lines Incorporated and The Canadian Union of Public Employees, Local 895; Cardinal grievance*, November 28, 1977. Majority: Dunn, Beaudoin — five pages; did not concur: McVey. (15)

Consumption of alcohol — grievors becoming intoxicated while at work and both performing dangerous jobs; Bowman grievance dismissed; McHenry grievance — reinstatement without compensation. *Re The Steel Company of Canada, Limited, Hilton Works and The United Steelworkers of America, Local 1005; Bowman and McHenry grievances*, November 25, 1977. Majority: Brent, Murray — eight pages; dissent: Ingle — six pages. (16)

Culminating incident: accident resulting from operation of company vehicle without due care; company unable to retain insurance coverage on behalf of grievor; suspension substituted. *Re Alexander Centre Industries Limited and United Steelworkers of America, Local 7842; Chartrand grievance*, November 4, 1977. Majority: McLaren, McNamara — 17 pages; dissent: Carriere — three pages. (17)*

Culminating incident: alleged absence without leave; reinstatement without compensation. *Re Air Canada and International Association of Machinists and Aerospace Workers; Braga grievance*, November 3, 1977. Rayner — 12 pages. (18)

Culminating incident — company alleging negligence in light of previous record and circumstances of grievor's collision in company vehicle; grievance dismissed. *Re Consolidated Aviation Fueling of Toronto Limited and International Association of Machinists and Aerospace Workers, Local 2413; Robinson grievance*, October 21, 1977. O'Connor — nine pages. (19)

Culminating incident: grievor arriving late for work and having history of lateness and unsatisfactory work performance; suspension substituted. *Re Toronto, The Municipality of Metropolitan and The Canadian Union of Public Employees, Local 43; Brasher grievance*. Majority: Brunner, Tate — 22 pages; dissent: Perron. (20)

Culminating incident: grievor being accused of driving company truck in dangerous manner; whether previous discipline related to manner of driving; suspension substituted. *Re Canadian Oxygen Limited and United Steelworkers of America, Local 14231; Timms grievance*, November 21, 1977. Hinnegan, Bernardo — ten pages; dissenting in part: Robinson. (21)

Culminating incident: grievor failing to report to work because of car trouble; employer misunderstanding message phoned in by grievor; suspension substituted. *Re Goodyear Canada Incorporated, New Toronto Factory and Central Distributing Warehouse and United Rubber, Cork, Linoleum and Plastic Workers of America, Local 232; Connelly grievance*, November 21, 1977. Dunn — six pages. (22)

Culminating incident — insubordination: grievor disobeying and swearing at supervisor; whether mitigating circumstances present; grievance dismissed. *Re The White and Company and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 419; Amendola grievance*, October 28, 1977. Majority: Kruger, Houck — six pages; dissent: Beaulieu. (23)

Culminating incident: refusing to follow supervisor's order to remain on the job; grievance dismissed. *Re Livingston Industries Limited and The International Woodworkers of America; Hammond grievance*, November 6, 1977. Majority: Rayner, Clawson — eight pages; dissent: Pointon. (24)

Culminating incident: sleeping while on duty; grievance dismissed. *Re Kimberley-Clark of Canada Limited and International Chemical Workers Union, Local 813; Timmons grievance*, November 10, 1977. O'Shea, Wirtz, Clawson — 21 pages. (25)

Excessive absenteeism — employer using non-punitive discharge and failing to apply mandatory sick leave provision of agreement; reinstatement without compensation. *Re Canada Valve Limited and International Molders and Allied Workers Union, Local 279; anonymous grievance*, November 18, 1977. Betcherman, Wohl, Farrar — six pages. (26)

Excessive absenteeism — grievor experiencing marital difficulties but not apprising employer of this fact; whether domestic situation likely to cause problems in the future; reinstatement without compensation. *Re Chateau-Gai Limited and International Chemical Workers Union, Local 849; Leblanc grievance*, November 9, 1977. Majority: O'Shea, Mutimer — 12 pages; dissent: Millman — ten pages. (27)

Excessive absenteeism: grievor having missed work because of illness; employer waiting until grievor returned to work, apparently fit, before informing him of termination; grievance allowed. *Re Rockwell International of Canada Limited and International Union United Automobile, Aerospace, Agricultural Implement Workers of America, Local 1067; Cook grievance*, November 29, 1977. Dunn — ten pages. (28)

Excessive innocent absenteeism — whether evidence establishing that grievor could not be expected to carry out duties on regular basis in future; reinstatement with compensation. *Re Scarborough General Hospital and Ontario Nurses' Association, Local 111; Chug grievance*, November 9, 1977. Majority: Brown, Walsh — 18 pages; dissent: Whittaker — four pages. (29)

Falsification of application form; grievor failing to note existence of back injury; whether falsification intentional or material to job; reinstatement with compensation. *Re McGraw-Edison of Canada Limited, Major Appliance Division and The International Union of Electrical Radio and Machine Workers, Local 595; Young grievance*, September 21, 1977. Majority: Beck, Aslin — 18 pages; dissent: Cook — two pages. (30)

Falsification of employment records — grievor attempting to defraud Unemployment Insurance Commission and convicted of criminal offence; employer having condoned falsification in past; suspension substituted. *Re The Toronto Harbour Commissioners and The International Longshoremen's Association, Local 1869; Hull grievance*, October 28, 1977. Kruger — eight pages. (31)

Grievor participating in unlawful strike by refusing to cross picket line established by another Unit within the Company; reinstatement without compensation. *Re Kitchener Beverages Limited and International Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers of America, Local 173; Breen grievance*, November 1, 1977. Majority: Baum, Petryshen — 14 pages; dissent: Anderson — three pages. (32)

Illegal strike — grievor playing relatively minor role; suspension substituted without loss of seniority. *Re Kitchener Beverages Limited and International Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers of America, Local 173; Glassford grievance*, November 1, 1977. Majority: Gorsky, Beckwith — 16 pages; dissent: Smith — four pages. (33)*

Inefficiency: grievor taking too long to complete jobs on lathe and failing to offer explanation for poor performance; suspension substituted. *Re Delamere and Williams Company Limited and United Electrical, Radio and Machine Workers of America, Local 512; Thomas grievance*, October 20, 1977. J.L. Roberts — 11 pages. (34)

Insubordination: grievor deliberately refusing to come to work on days on which company refused to grant vacation leave; grievance dismissed. *Re Ontario Hydro and Ontario Hydro Employees' Union, Local 1000; DePietro grievance*, November 1, 1977. Majority: Swan, Storie — 14 pages; dissent: Paliare — 13 pages. (35)

Insubordination: grievor wilfully refusing to report for work at particular site; suspension substituted. *Re Fort Erie, The Corporation of the Town of, and The Canadian Union of Public Employees, Local 714; Johnson grievance*, September 21, 1977. Majority: J.L. Roberts, Campbell — eight pages; dissent: Williams. (36)

Insubordination: request for leave of absence denied — grievor failing to report for work as directed; whether employment terminated by operation of provisions of collective agreement requiring availability for work; suspension substituted. *Re The Religious Hospitaliers of Hotel Dieu of St. Joseph of the Diocese of London and Ontario Nurses' Association, Local 79; Scarfone grievance*, November 17, 1977. Majority: Brandt, Switzman — 22 pages; dissent: Bartlet — seven pages. (37)

Level of job performance: grievors failing to achieve company sales quota; grievances dismissed. *Re Rodney Downs Distributing Limited and Retail, Wholesale and Department Store Union, Local 440; Gosden, G. Irving grievances*, November 9, 1977. Kennedy, Spaxman, Cook — ten pages; addenda: Spaxman — two pages; Cook — two pages. (38)

Period of absence without leave: whether company meeting onus of establishing absence was without legitimate cause; reinstatement with compensation. *Re Rodney Downs Distributing Limited and Retail, Wholesale and Department Store Union, Local 440; L. Irving grievance* — see (38), *supra*. (39)

Possession of stolen property: employer claiming that criminal conviction of grievor prejudicial to Fire Department's image in the community; reinstatement with compensation. *Re Borough of East York, The Corporation of the, and The International Association of Fire Fighters, Local 418; Mott grievance*, November 23, 1977. Kennedy — nine pages. (40)

Quit alleged: whether grievor possessing true intention to voluntarily resign; reinstatement with compensation. *Re Belvedere Heights Home for the Aged and Service Employees Union, Local 478; Miller grievance*, September 20, 1977. Ferguson, Beresford, Dodge — 13 pages. (41)

Sleeping on the job — grievor falling asleep accidentally and not endangering other employees; suspension substituted. *Re Dayton-Walther Company Limited and United Steelworkers of America, Local 4656; MacDonald grievance*, November 3, 1977. Brown — 14 pages. (42)

Theft: grievor constructing bypass on company's gas meter in his own home; whether penalty should be modified in light of grievor's long discipline-free record; grievance dismissed. *Re Northern and Central Gas Corporation Limited and The United Steelworkers of America, Local 7356; Coneybear grievance*, October 31, 1977. Majority: O'Shea, Von Veh — 14 pages; dissent: Carriere — one page. (43)*

Theft: employer alleging that grievor refusing to pay for food consumed at employer's snack bar; grievor alleging intent to pay later; reinstatement without compensation. *Re Brampton, The Corporation of the City of, and Canadian Union of Public Employees, Local 831; Feeney grievance*, October 20, 1977. Rayner, Brown, Filion — seven pages. (44)

Theft of company property — grievor claiming that items removed from plant were refuse as far as employer was concerned; suspension substituted. *Re Burlington Steel and United Steelworkers of America, Local 4752; Skibinski grievance*, November 16, 1977. Ellis — 26 pages. (45)

Discipline

Grievors arguing and fighting amongst themselves while on the job site; grievances allowed in part. *Re Libby, McNeill and Libby of Canada and United Automobile, Aerospace and Agricultural Implement Workers of America, Local 127; Tomecek, Twigg grievances*, November 17, 1977. Brandt — ten pages. (46)

Grievors participating in October 14, 1976 "Day of Protest"; whether positions on union executive justifying a more severe penalty than that imposed on other employees; grievances dismissed. *Re Consolidated Bathurst Packaging Limited, St. Thomas, Ontario and International Woodworkers of America, Local 2-337; Lazenby et al grievances*, November 10, 1977. Majority: Brown, Rogers — 22 pages; dissent: Wren. (47)*

Improper relief procedure — grievors causing production loss by exchanging work position at inappropriate time; grievances dismissed. *Re The Steel Company of Canada, Limited, Hilton Works and The United Steelworkers of America, Local 1005; Durost and Laidman grievances*, November 14, 1977. Majority: Brent, Storie — four pages; dissent: Ormsby. (48)

Insubordination: grievors refusing to perform work on conveyor system; whether justified by concern over safety; grievances dismissed. *Re The Steel Company of Canada, Limited and United Steelworkers of America, Local 1005; Gillis, Gallagher and Matuch grievances*, October 31, 1977. Brandt, Riggs, Stetson — 13 pages. (49)

Insubordination: grievor refusing to wear hat while in uniform but off-duty; whether rule regarding wearing of hat reasonable; grievance allowed. *The The Hamilton Street Railway Company and Amalgamated Transit Union, Local 107; Swackhammer grievance*, November 1, 1977. Majority: Burkett, Switzman — 15 pages; dissent: Morley — three pages. (50)*

Insubordination: grievor refusing to work and leaving factory because of excessive heat in work area; warning substituted. *Re The E.T.F. Tools Limited and The United Steelworkers of America, Local 4469; Walker grievance*, November 16, 1977. McCulloch — 15 pages. (51)

Lateness — grievors reasonably believing they had the day off; grievances allowed. *Re Toronto, The Municipality of Metropolitan, and Canadian Union of Public Employees, Local 43; Murphy, McHale grievances*, November 8, 1977. Adams, Tate, Perron — seven pages. (52)

Evidence

Grievor discharged for alleged theft of company property: statements of co-accused sole evidence of grievor's involvement; whether statements admissible to establish culpability; grievance dismissed. *Re Pilkington Brothers (Canada) Limited and United Glass and Ceramic Workers of North America, Local 295; Fitzpatrick grievance*, August 16, 1977. Majority: Palmer, Healy — nine pages; dissent: Wright — two pages. (53)

Grievance Procedure

Employer grievance — whether employer required to follow pre-arbitration procedures; whether objection by union untimely; grievance arbitrable. *Re Mansfield-Denman General Company Limited and The United Rubber, Cork, Linoleum and Plastic Workers of America; company grievance*, November 16, 1977. Majority: Hinnegan, Scott — 21 pages; dissent: Punnett. (54)

Representation by union steward — employer refusing to permit steward to be present at meeting to discuss grievor's insubordination; grievance allowed. *Re The Steel Company of Canada, Limited and United Steelworkers of America, Local 1005; Gillis grievance*, October 31, 1977. Majority: Brandt, Stetson — five pages; dissent: Riggs — four pages. (55)

Timeliness — company objecting that union grievance with respect to work assignment to workers outside bargaining unit not brought within reasonable time; objection dismissed. *Re Woodstock General Hospital Trust and London and District Service Workers Union, Local 220; policy grievance*, November 7, 1977. Interim Award: Weatherill, Switzman, Sanderson — six pages. (56)

Union alleging non-compliance by company with grievance and arbitration procedures with respect to company's claim for damages regarding October 14, 1976 work stoppage; objection dismissed. *Re Inco Limited and United Steelworkers of America; union grievance*, November 7, 1977. Preliminary Award: Weatherill, Keck, Riggin — 15 pages. (57)

Holiday Pay

Eligibility: grievors claiming pay for holidays occurring immediately after their lay-off; grievance dismissed. *Re Bomac Steel Company Limited and United Steelworkers of America; group grievance*, November 14, 1977. Majority: O'Shea, Stringer — nine pages; dissent: Lyons — one page. (58)

Entitlement: employer not allowing holiday pay to employees properly absent by reason of accident or illness on qualifying day; grievance dismissed. *Re The Pedlar People Limited and United Steelworkers of America, Local 2784; union grievance*, November 11, 1977. Majority: Weatherill, Healy — seven pages; dissent: Wareham. (59)

Entitlement: grievor absent from work on qualifying days due to prolonged illness; grievance allowed. *Re Weston Bakeries Limited and Bakery and Confectionary Workers' International Union of America, Local 403; Katsoulas grievance*, November 11, 1977. Kennedy, Dawson, Farrar — six pages. (60)

Entitlement: qualifying days falling during grievor's scheduled vacation; grievance allowed. *Re Brockville Chemicals Limited and Canadian Chemical Workers Union; Korim grievance*, October 31, 1977. Rayner, McGee, Bost — five pages. (61)

Entitlement — union claiming employees on seasonal lay-off entitled to pay for holidays occurring during lay-off if they are subsequently recalled; grievance allowed in part. *Re Hanmer Bus Lines Incorporated and Canadian Union of Public Employees, Local 895; policy grievance*, November 28, 1977. Majority: Dunn, McVey — six pages; did not concur: Beaudoin. (62)

Rate: collective agreement providing for accumulation of "lieu day" credits for holidays and weekends worked; whether such credits to be compensated on separation at current rate of salary or at rate at time credits earned; grievance dismissed. *Re The Ontario Public Service Employees Union and The Ontario Public Service Staff Union; Millard grievance*, November 10, 1977. O'Connor — eight pages. (63)

Hours of work

Rest period — union claiming entitlement during four hour overtime shift; whether union can rely on past practice; grievance dismissed. *Re Fisher Controls Company of Canada Limited and International Union United Automobile, Aerospace and Agricultural Implement Workers of America, Local 636; policy grievance*, October 28, 1977. Majority: Adams, Hersey — 13 pages; dissent: Cooper — one page. (64)*

Shift transfer: grievor seeking return to original shift after being transferred at his request, claiming transfer temporary; grievance dismissed. *Re Toronto East General and Orthopaedic Hospital and Ontario Public Service Employees Union, Local 576; Zahoransky grievance*, November 8, 1977. Majority: Brent, Earle — six pages; dissent: Trower — seven pages. (65)

Illness

Ability to return to work — employer initially refusing to permit grievor to return despite medical permission; whether employer liable for delay; grievance allowed. *Re Molson's Brewery (Ontario) Limited and International Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers of America, Local 304; Cirone grievance*, November 1, 1977. Weatherill — 15 pages. (66)

Lay-off

Guarantee against lay-off on sale of licences to subsidiary — grievor claiming compensation because of such a sale; whether casual relationship established; grievance dismissed. *Re Wallace Transport Company Limited and The Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 879; Millar grievance*, October 19, 1977. Majority: Palmer, Fosberry — nine pages; dissent: Hurd. (67)

Inventory-taking — employer failing to apply seniority provisions in selecting employees to take inventory; whether such work is covered by collective agreement; grievance dismissed. *Re Reed Limited, Furniture Division and Canadian Union of Industrial Employees; group grievance*, November 25, 1977. Majority: Burkett, Sanderson — 16 pages; dissent: Knazan — seven pages. (68)*

Seniority: grievor alleging improper lay-off without regard to seniority or elective vacation; grievance dismissed. *Re Charles Wilson Limited and Canadian Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers; Landry grievance*, Undated. Majority: Brunner, McKillop — 11 pages; dissent: Green — eight pages. (69)

Seniority rights — grievors laid off while junior employees of higher classification retained; whether grievors possessed skills to perform junior employees' job; grievances dismissed. *Re Electrohome Limited and International Brotherhood of Electrical Workers, Local 2345; Doiron et al grievances*, October 26, 1977. Majority: O'Shea, Noonan — 11 pages; dissent: Knipfel — one page. (70)

Leave of Absence

Alternative to termination — employer placing grievor on extended leave of absence in circumstances where grievor would otherwise be subject to non-punitive discharge; grievance dismissed. *Re GTE Automatic Electric (Canada) Limited and International Union of Electrical, Radio and Machine Workers, Local 526; Woolley grievance*, November 18, 1977. Kennedy, Millard, Healy — nine pages; addedum: Millard — two pages. (71)*

Company alleging deemed quit when grievor left for medical reasons; grievance allowed. *Re Great Atlantic and Pacific Company of Canada Limited and Canadian Food and Allied Workers; Demers grievance*, October 4, 1977. Majority: A.M. Linden, Simon — nine pages; dissent: Dinsdale — eight pages. (72)

Memorandum of Settlement

Discharge grievance — memorandum detailing implementation of earlier award. *Re Hamilton Civic Hospitals, The Board of Governors of, and Nurses' Association, Hamilton Civic Hospitals; Baptist grievance*, October 31, 1977. Ord, Walsh, Sanderson — three pages. (73)

Overtime

Distribution: grievor claiming breach of provision that overtime will be distributed among employees in same job classification; employee performing work in different job classification; grievance allowed. *Re Foster Wheeler Limited and United Steelworkers of America, Local 6519; Garner grievance*, November 25, 1977. O'Shea — ten pages. (74)

Distribution: grievor claiming that assignment of another employee as exclusive driver of large truck offending equal distribution provisions of agreement; grievance dismissed. *Re Canadian Pittsburgh Industries Limited (Owen Sound) and United Glass and Ceramic Workers of North America; Puckett grievance*, November 29, 1977. Majority: Burkett, Churchill-Smith — 12 pages; dissent: Hurst — two pages. (75)

Employer scheduling compulsory overtime for periods where previously the allocation of such overtime had been on voluntary basis; grievor refusing to comply with compulsory overtime schedule; Smith grievance allowed; union grievance allowed in part. *Re Dominion Stores Limited and Retail, Wholesale and Department Store Union, Local 545; Smith, union grievances*, November 14, 1977. Majority: Brown, Lachance — 15 pages; dissent: White — two pages. (76)*

Overtime Pay

Calculation: employer not including COLA increase as an integral part of regular hourly rate on which calculation of overtime pay based; grievance dismissed. *Re Bundy of Canada Limited and International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, Local 1285; policy grievance*, November 9, 1977. O'Shea — 13 pages. (77)

Entitlement: employees working less than full work week because of close-down; employer not paying overtime rates for hours worked in excess of eight hours on subsequent days; grievance allowed. *Re George W. Endress Company Limited and Amalgamated Clothing and Textile Workers Union; union grievance*, November 14, 1977. Weatherill, Clarke, Heather — seven pages. (78)

Strike: security guards confined to company property while performing emergency authorized work over extended period of days; grievance allowed. *Re The International Nickel Company of Canada Limited and Canadian Guards Association, Local 105; association grievance*, November 7, 1977. Majority: Brown, McVey — 25 pages; addendum: McVey — one page; dissent: Werry — two pages. (79)*

Part-time Employees

Grievors working in excess of designated maximum hours for part-time employees during Christmas period — whether "regularly" working such hours so as to require change in classification to "temporary" employees; grievances dismissed. *Re The Canadian Press and Canadian Wire Service Guild; Canham, Colosimo grievances*, October 31, 1977. Majority: Rayner, Sanderson — seven pages; dissent: Posen — one page. (80)*

Premium Pay

Collective agreement requiring payment of premium rates for work performed after change in shift schedule made without required seven-day notice; whether such rates payable for all work performed until seven-day notice expired or only for work performed under the changed schedule; grievance dismissed. *Re Ontario Hydro and Canadian Union of Public Employees, Local 1000; Mannell grievance*, November 16, 1977. Weatherill, Hamilton — six pages; did not concur: Scott. (81)

Probationary Employees

Exclusion from grievance procedure — union claiming grievance arbitrable because exclusion contrary to s.37 of *The Labour Relations Act*; grievance arbitrable. *Re International Waxes Limited and Oil, Chemical and Atomic Workers' International Union; Harmon and Taylor grievances*, November 14, 1977. Majority: Schiff, Edwards — 20 pages; dissent: Wakely — 12 pages. (82)*

Promotion

Eligibility requirements for entry into apprenticeship program: grievor claiming seniority governs when applicants equal on specified requirements; grievance dismissed. *Re Motor Wheel Corporation and International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, Local 127; Sitzes grievance*, October 31, 1977. Brandt — nine pages. (83)

Qualifications — grievors claiming seniority should govern because of equal qualifications; whether employer's subjective assessment subject to review; grievances dismissed. *Re Webster Mfg. (London) Limited and International Molders' and Allied Workers' Union, Local 49; Centen and DeWolfe grievances*, November 23, 1977. Majority: Hinnegan, Adamson — ten pages; did not concur: Wohl. (84)

Seniority — grievor less qualified and employer not being required to provide training; grievance dismissed. *Re Beach Appliances International Limited and International Union, United Automobile, Aerospace and Agricultural Implement Workers of America; Belly grievance*, November 1, 1977. O'Shea — nine pages. (85)

Reporting Pay

Entitlement: grievor failing to hear radio announcement that shift cancelled due to storm; grievance dismissed. *Re Motor Wheel Corporation and International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, Local 127; Van Dyke grievance*, October 31, 1977. Brandt — six pages. (86)

Res Judicata

Premium pay: change in relation to job requirements; Board considering binding effect of earlier arbitral awards. *Re Phillips Cables Limited and International Union of Electrical, Radio and Machine Workers of America, Local 510; group grievance*, August 3, 1977. Interim award: Swan, Millard, McIsaac — 22 pages. (87)*

Scheduling of Work

Break periods — whether decision to implement one break period instead of staggered periods is "change in production methods"; grievance dismissed. *Re Benson and Hedges (Canada) Limited Brampton Plant and Tobacco Workers International Union, Local 325; policy grievance*. Majority: Brunner, Werry — seven pages; dissent: Tate — two pages. (88)*

Continuous operations — union claiming one paper machine cannot operate continuously when another machine working less than five days; whether machines producing identical products; grievance dismissed. *Re E.B. Eddy Forest Products Limited and Canadian Paperworkers Union, Local 33; policy grievance*, November 21, 1977. Majority: Dunn, Laishley — five pages; dissent: Quaife — two pages. (89)

Discrimination alleged when Union President's shift changed on very short notice; grievance dismissed. *Re Niagara Structural Steel (St. Catharines) Limited and The United Steelworkers of America, Local 7012; Ruf grievance*, November 3, 1977. O'Connor, Cameron, Sharp — four pages; addendum: Sharp — one page. (90)

Employer unilaterally modifying hours of work; whether collective agreement provision setting out normal scheduled hours and standard starting and stopping times constituting a guarantee of working schedules; grievance dismissed. *Re Alcan Canada Products Limited and United Steelworkers of America, Local 7913; group grievance*, November 14, 1977. Majority: O'Shea, McNaughton — 12 pages; dissent: Grasso — one page. (91)*

Seniority

Denial of bumping rights: whether company decision that grievor not qualified to perform job of junior employee an honest and reasonable one; grievance dismissed. *Re Northern Telecom Limited (Belleville) and United Automobile Workers, Local 1839; Drennan grievance*, November 10, 1977. Fraser — 11 pages. (92)

Sick Pay

Insurance plan — grievor alleging doctor's charges for completing sickness and accident forms a company responsibility; grievance dismissed. *Re Norton Company of Canada Limited and International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, Local 397; Clark grievance*, November 7, 1977. Brown — nine pages. (93)

The following awards in interest arbitrations under The Hospital Labour Disputes Arbitration Act were also filed with the Commission during the month of November, 1977:

Sudbury Memorial Hospital and Ontario Public Service Employees Union, Local 619, Ord, Buckland — 14 pages; dissent: Acton.

Middlesex, The Corporation of, (Strathmere Lodge) and London and District Service Workers' Union, Local 220, McCulloch, Walsh, Hockin — 27 pages.

Sarnia, The Corporation of the City of, (Marshall Gowland Manor) and London and District Service Workers' Union, Local 220, Betcherman, Switzman — 14 pages; addendum: Switzman — two pages; dissent: Furlong — four pages.

Baycrest Hospital and/or Jewish Home for the Aged, Sunnybrook Hospital, Toronto East General and Orthopaedic Hospital Inc., The Wellesley Hospital and Service Employees Union, Local 204, Sunnybrook Hospital Employees Union, Local 777, Supplementary award: Swan, Filion — eight pages; dissent: Wren.

The awards may be seen at the office of the Commission, 400 University Avenue, 14th floor, Toronto. Copies of awards may be obtained for a fee of 50 cents per page. Orders will be filled on receipt of an application and a cheque or money order payable to the Treasurer of Ontario for the applicable amount, which should be forwarded to: Cashier's Office, Ministry of Labour, 400 University Avenue, Toronto, Ontario M7A 1V6.

Filing Awards

The attention of chairmen of boards of arbitration and sole arbitrators is drawn to the provision of Section 6(2) of the Regulation, which reads: 6.—(2) Every arbitrator shall, within ten days of issuing an award, file a copy thereof with the Commission. This provision would apply to all arbitrators approved under The Ontario Labour-Management Arbitration Commission Act and regardless of whether they were appointed as chairmen or sole arbitrators pursuant to the Act, by the parties or by the Minister.

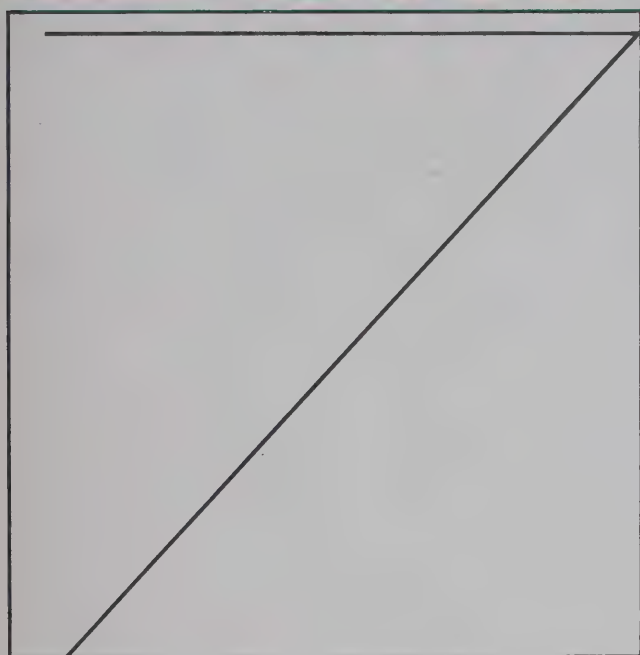
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Monthly Bulletin



The Ontario Labour-Management
Arbitration Commission

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T.E. Armstrong, QC, Deputy Minister

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Awards

The following awards were filed with the Commission during the months of November and December, 1977, under Section 6(2) of Ontario Regulation 635, R.R.O. 1970.

The summary was prepared at the Faculty of Law, Queen's University, under the supervision of C.G. Simmons, B.A., B.C.L., LL.M., and R.S. Irwin, B.A., LL.M.

* Indicates award to be reported in full or in part in Labour Arbitration Cases.

Bereavement Pay

Entitlement — grievor claiming pay for day of funeral which occurred during grievor's vacation; grievance dismissed. *Re The Budd Automotive Company of Canada Limited and United Automobile Workers, Local 1451; Steffler grievance*, December 9, 1977. O'Shea — nine pages. (1)

Board of Arbitration

Death of company nominee after hearing but prior to issuance of final award: whether remaining two members of Board possessing authority to issue final award; new Board of Arbitration required. *Re Canadian Press Broadcast News Limited and Canadian Wire Service Guild, Local 213; MacDonald grievance*, December 2, 1977. Majority: Kennedy — five pages; dissent: Trower — three pages; appendices — ten pages. (2)*

Classification

Equal pay for equal work — grievor claiming entitlement to higher pay because his job involved skill, ability and output similar to that of higher classification; grievance dismissed. *Re Square D Company Canada Limited and United Electrical, Radio and Machine Workers of America, Local 505; Primorac grievance*, November 30, 1977. Majority: Adams, Werry — 15 pages; dissent: Longridge — three pages. (3)

Grievor performing work of higher job classification although not qualified to do so; whether entitled to higher wage rate; grievance allowed. *Re Hodgson's Steel and Ironworks Limited and United Steelworkers of America, Local 6460; Detlor grievance*, November 24, 1977. J.L. Roberts — seven pages. (4)

Collective Agreement

Scope — whether new branch operation under control of existing branch so that its employees covered by collective agreement; grievance allowed. *Re Canteen of Canada Limited and Retail, Wholesale and Department Store Union, Local 414; union grievance*, December 6, 1977. Burkett, Nielsen, Dahmer — nine pages. (5)

Contracting Out

Non-employee performing bargaining unit work contrary to collective agreement; work being performed at request of and for benefit of member of bargaining unit without knowledge or permission of employer; grievance dismissed. *Re Dominion Stores Limited and Retail, Wholesale and Department Store Union, Local 414; McNeil grievance*, November 14, 1977. Majority: J.L. Roberts, White — six pages; dissent: Spaxman — two pages; addendum: Roberts — one page. (6)*

Outside workers doing bargaining unit jobs: whether outside workers became "company" employees; grievance dismissed. *Re Inglis Limited and The United Steelworkers of America, Local 2900; group grievance*, November 25, 1977. Curtis — five pages. (7)

Damages

Union encouraging participation in October 14, 1976 "Day of Protest" — whether liable in damages for loss suffered by company; grievance allowed. *Re Canadian Vinyl Fabrics, Stauffer Chemical Company of Canada, Limited and United Steelworkers of America, Local 13286; company grievance*, December 19, 1977. Majority: O'Shea, Cook — 35 pages; dissent: Gerard — two pages. (8)

Demotion

Company considering grievor a greater than average risk as a bus operator in light of driving history; whether justified in placing grievor in a different position; grievance dismissed. *Re Kitchener, The Corporation of the City of, and The Canadian Brotherhood of Railway, Transport and General Workers, Local 304; Legge grievance*, December 21, 1977. Majority: Brent, Storie — 15 pages; dissent: Bruder — one page. (9)*

Company refusing to permit employee to continue driving company vehicle after licence suspended for second time; whether such policy arbitrary or unreasonable; grievance dismissed. *Re Canada Packers Limited and Canadian Food and Allied Workers; Taylor grievance*, December 23, 1977. Weatherill, Weisbach, Williamson — six pages. (10)

Discharge

Absent without leave; employee misunderstanding application for leave procedures; misunderstanding possibly due to language barrier; reinstatement without compensation. *Re Indalex Limited and United Steelworkers of America, Local 2729; Fortunato grievance*, December 15, 1977. Burkett — ten pages. (11)

Absent without permission: grievor not returning to work immediately following vacation; work record considered; reinstatement without compensation. *Re Belmont Meat Products Limited and Canadian Food and Allied Workers, Local 633; Prezioso grievance*, December 12, 1977. Rayner — six pages. (12)

Absent without satisfactory reason for more than three consecutive working days: discharge provided for in collective agreement; grievance dismissed. *Re Liquid Carbonic Canada Limited and United Steelworkers of America, Local 12998; Peters grievance*, December 14, 1977. Majority: Kennedy, Filion — eight pages; dissent: Wilton. (13)

Absenteeism excessive — whether absence due to back injury precipitating discharge could be treated as culminating incident; grievance allowed. *Re Sunbeam Home and London and District Service Workers' Union, Local 220; Jacobs grievance*, November 15, 1977. Majority: Simmons, Switzman — eight pages; dissent: Sanderson — two pages; addendum: Switzman — three pages. (14)

Company discharging all participants in unlawful strike — no distinction made between active and passive participants; whether such imposition of discipline contrary to principle of equality of treatment; suspension substituted. *Re Kitchener Beverages Limited and Canadian Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers; Gacparski grievance*, November 30, 1977. Majority: McLaren, Roussel — 20 pages; dissent: Duff — four pages. (15)

Culminating incident: absence without leave; grievor not reporting as result of being sentenced to jail for criminal offence; grievance dismissed. *Re Lake Ontario Steel Company Limited and United Steelworkers of America, Local 6571; Moore grievance*, December 20, 1977. Majority: Hinnegan, Lanz — six pages; dissent: Jones — one page. (16)

Culminating incident: alleged inadequate work performance and unauthorized absence from workplace; reinstatement with compensation. *Re Harsco Corporation, Heckett Division and United Steelworkers of America, Local 7577; Camera grievance*, August 19, 1977. Welling — nine pages. (17)

Culminating incident: continued production below standard required; grievance dismissed. *Re G. Tamblin Limited and Canadian Chemical Workers Union, Local 8; Woolley grievance*, November 14, 1977. Majority: McLaren, Piroth — 13 pages; dissent: McIlwain. (18)

Culminating incident: grievor failing to notify employer of absence from work; grievor having been reinstated after previous discharge on condition that he obey absenteeism rules; grievance dismissed. *Re The Ontario Council of Regents of Colleges of Applied Arts and Technology and Fanshawe College and The Ontario Public Service Employees Union; Greeley grievance*, December 5, 1977. Majority: O'Shea, Clawson — 17 pages; dissent: Trower — three pages. (19)

Culminating incident: grievor punching out fellow employee's time card; suspension substituted. *Re Consolidated-Bathurst Packaging Limited and International Woodworkers of America, Local 2-76; Tetley grievance*. Brunner, Rogers, Weisbach — 15 pages. (20)

Deliberate failure to obey welding instructions resulting in potential death or serious injury to consumer; grievance dismissed. *Re Massey-Ferguson Industries Limited and United Automobile Workers, Locals 439 and 450; Berlingieri grievance*, December 9, 1977. Schiff — six pages. (21)

Disabling attitude and allegations of non-cooperation; reinstatement with compensation. *Re Canadian National Institute for the Blind and The Service Employees Union, Local 204; Jarvis grievance*, December 12, 1977. Majority: Brent, Simon — 15 pages; dissent: Farrar. (22)

Employee's medical fitness for job for which he was hired not established; grievance dismissed. *Re Dominion Stores Limited and Retail, Wholesale and Department Store Union, Local 414; Fleming grievance*, November 30, 1977. Majority: Brown, White — 14 pages; dissent: Dahmer — two pages. (23)

Failing to ring up sales: company testing after first offence without warning compounding employee guilt; suspension substituted. *Re Dominion Stores Limited and Retail, Wholesale and Department Store Union, Local 414; Skinner grievance*, November 25, 1977. Majority: Curtis, Dahmer — seven pages; did not concur: White. (24)

Illegal strike: non-striking employees honouring picket lines; grievors believing they had no obligation to cross picket line; reinstatement without compensation. *Re Kitchener Beverages Limited and International Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers of America, Local 173; group grievance*, December 14, 1977. Majority: Kennedy, Petryshen — 12 pages; dissent: Sparling — two pages. (25)

Poor work attitude: grievor deliberately wasting time and attempting to avoid work assignments; whether grievor given opportunity to rectify attitude; grievance dismissed. *Re Douglas Aircraft Company of Canada Limited and United Automobile Workers, Local 1967; MacLennan grievance*, December 19, 1977. O'Shea — 33 pages. (26)

Theft of company property: grievors switching company receipts in more valuable American currency with Canadian currency of their own; grievances dismissed. *Re Windsor Raceway Holdings Limited and Hotel and Restaurant Employees' Union, Local 743; Bennett, Kozak grievances*, December 23, 1977. Majority: Hinnegan, Bartlet — 13 pages; dissent: Brown — two pages. (27)

Theft of company property: isolated incident and small quantity; reinstatement without compensation. *Re Coca-Cola Limited and Canadian Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers; Boud grievance*, November 29, 1977. Curtis — 11 pages. (28)

Unlawful strike — employer failing to discipline other participants in strike; whether grievors initiated walkout; reinstatement with compensation. *Re Fabricated Steel Products (Windsor) Limited and United Automobile Workers, Local 195; Colombe and Fryer grievances*; December 15, 1977. O'Shea — 20 pages. (29)

Unlawful strike: grievors refusing to cross picket line established by fellow employees in different bargaining unit; whether grievors properly advised by their union; Voll grievance dismissed; Bender, Ilgauds, Wells, Charlton and Shantz reinstated without compensation. *Re Kitchener Beverages Limited and International Union of Brewery, Flour, Cereal, Soft Drink and Distillery Workers of America, Local 173; Bender et al grievances*, November 24, 1977. Majority: Bigelow, Beckwith — seven pages; dissent: Young — 11 pages. (30)

Use of marijuana on company premises: potential danger to himself and fellow employees; grievance dismissed. *Re Firestone Steel Products of Canada and United Automobile Workers, Local 27; Drennan grievance*, December 12, 1977. Rayner — six pages. (31)*

Discipline

Alleged falsification of time records: grievor leaving work area prior to completion of shift; grievance allowed. *Re Air Canada and International Association of Machinists; Malloy grievance*, December 6, 1977. Adams — 12 pages. (32)

Disobeying company rules: company alleging employee tampering with company parking signs; grievance allowed. *Re Libby, McNeill and Libby of Canada and United Automobile Workers, Local 35; Bennell grievance*, December 1, 1977. Brown — 12 pages. (33)

Disobeying company rules: consistent failure to obey lay-over instructions with respect to motel accommodation; grievance dismissed. *Re Carling-O'Keefe Transport Limited and Brewery Workers, Local Union 304; Bellinger grievance*, December 9, 1977. Brown — 13 pages. (34)

Failure to work overtime: company failing to show that grievors aware of mandatory nature of overtime; grievances allowed. *Re Sterling Drug Limited and Oil, Chemical and Atomic Workers International Union, Local 9-435; Scott and Drake grievances*, November 28, 1977. Majority: Shime, Edwards — ten pages; dissent: McDermott — three pages. (35)

Insubordination: grievor leaving work early without permission; whether kinship of grievor and supervisor influenced penalty; grievance dismissed. *Re Harrisons and Crosfield (Canada) Limited and International Chemical Workers Union, Local 424; Wright grievance*, December 15, 1977. Majority: O'Shea, Steven — 11 pages; dissent: Phillips. (36)

Insubordination: refusing to participate in tests concerned with evaluation of training; grievance dismissed. *Re Etobicoke, The Corporation of the Borough of, and The Etobicoke Professional Firefighters Association, Local 1137, International Association of Firefighters; group grievance*, December 7, 1977. Kennedy — 19 pages. (37)

Refusing to work when ordered: grievor insisting on presence of steward when none available immediately; grievance dismissed. *Re Lake Ontario Steel Company and United Steelworkers of America, Local 6571; Tiller grievance*, November 21, 1977. Majority: McLeod, Sparling — six pages; dissent: Grills — two pages. (38)

Evidence

Past practice: company objecting to evidence of past practice because agreement clear and unambiguous; objection sustained. *Re The Steel Company of Canada Limited, Hilton Works and The United Steelworkers of America, Local 1005; company grievance*, November 29, 1977. Majority: Simmons, Sanderson — ten pages; dissent: Keck. (39)*

Health Insurance Plans

Company contribution to OHIP premium cost: whether "present" cost includes increased rates or rates at effective date of collective agreement; grievance dismissed. *Re Metropolitan Toronto Separate School Board and The Ontario English Catholic Teachers' Association; group grievance*, November 12, 1977. Majority: Curtis, Gordon — six pages; did not concur: Koskie. (40)

Job Vacancy

Grievor seeking transfer to job left vacant as result of employee taking maternity leave; whether such vacancy to be considered "permanent"; grievance dismissed. *Re Air Canada and The Canadian Air Line Employees' Association; Rowsell grievance*, December 19, 1977. Simmons — 17 pages. (41)

Seniority: employee appointed to vacancy possessing less seniority than grievor; grievance allowed. *Re Dominion Stores Limited and Retail, Wholesale and Department Store Union, Local 414; Amo grievance*, December 19, 1977. Weatherill, Hall, White — six pages. (42)

Lay-Off

Alleged denial of proper notice: senior employees originally named in lay-off notice exercising bumping rights just prior to date of lay-off, resulting in junior employees bumped not receiving adequate notice; whether company obligated to pay wages in lieu of notice; grievance allowed. *Re Haley Industries Limited and United Steelworkers of America; policy grievance*, November 25, 1977. Majority: Rayner, Gareau — four pages; dissent: Churchill-Smith — three pages. (43)

Bumping rights: whether grievor can bump junior employee in higher classification; grievance dismissed. *Re Chatham, The Corporation of the City of, and The Canadian Union of Public Employees, Local 12; Dozois grievance*, December 21, 1977. Dunn, Freedman, Anderson — four pages. (44)

Inefficiency due to lack of tools despite seniority: whether company could require employees to provide their own tools; grievance allowed subject to mitigation. *Re George White and Sons Company Limited and The International Association of Machinists and Aerospace Workers; Vandebogart grievance*, November 30, 1977. Majority: Rayner, Wren — seven pages; dissent: Healy — three pages. (45)

Seniority: grievor possessing ability to do most work performed by junior employee; junior employee possessing some special skills; grievance dismissed. *Re Hauserman Limited and United Steelworkers of America; Chippett grievance*, December 15, 1977. Majority: O'Shea, Baldwin — nine pages; dissent: Christie. (46)

Management Rights

Indefinite suspension pending disposition of criminal charges against grievor relating to his employment and damaging to legitimate concerns of employer; grievance dismissed. *Re The Ontario Jockey Club and Mutuel Employees' Association, Service Employees' International Union, Local 528; K. grievance*, December 14, 1977. Majority: Kennedy, Hamilton — seven pages; dissent: Tate — eight pages. (47)*

Overtime

Relief work: grievor claiming right to perform relief work on overtime basis; employer transferring another employee to work on straight time basis; grievance dismissed. *Re Allied Chemical Canada, Limited and United Automobile Workers, Local 89; Federico grievance*, December 9, 1977. O'Shea — 13 pages. (48)

Probationary Employee

Dismissal: company alleging discretion to discharge probationary employees; grievor alleging completion of probationary period; grievance not arbitrable. *Re Consolidated-Bathurst Packaging Limited and International Woodworkers of America, Local 2-233; Chabot grievance*, November 25, 1977. Curtis, Rogers, Weisbach — nine pages; addendum: Weisbach — one page. (49)

Progression

Management rights: union alleging alteration of lines of job progression improper; grievance dismissed. *Re The Ontario-Minnesota Pulp and Paper Company Limited and The United Paperworks International Union, Local 92; union grievance*, November 30, 1977. Weatherill — eight pages. (50)*

Promotion

Definition: grievor automatically entering higher classification on receiving registration as nurse; whether grievor entitled to be in same level of new classification or subject to less advantageous promotion provisions; grievance dismissed. *Re The Greater Niagara General Hospital and Nurses' Association The Greater Niagara General Hospital; Condino grievance*, December 15, 1977. Majority: O'Shea, Dixon — 16 pages; dissent: Angus — three pages. (51)

Definition: job posting provisions applying only in cases of promotion; whether transfer to job in same classification offering possibility of higher pay is promotion; grievance allowed. *Re Kendall Canada Limited and United Steelworkers of America, Local 8905; Stanmore grievance*, December 16, 1977. Majority: Weatherill, Wilton — six pages; dissent: Murray — five pages. (52)*

Scheduling of Work

Company unilaterally altering established working hours of the grievors: whether contrary to collective agreement; grievance allowed. *Re City of Toronto, the Corporation of the, and The Canadian Union of Public Employees, Local 79; Richmond, Ross grievances*, November 30, 1977. Majority: Rubenstein, Tate — ten pages; dissent: Paulin — three pages. (53)

Company unilaterally altering schedule: whether change necessitated by employee illness; grievance allowed in part. *Re Dominion Stores Limited and Retail, Wholesale and Department Store Union, Local 414; policy grievance*, December 21, 1977. Brown, Sargeant, Spaxman — eight pages. (54)

Employer unilaterally shutting down operations because of severe weather conditions: whether violation of collective agreement; grievance dismissed. *Re Welland, Corporation of the City of, and Canadian Union of Public Employees, Local 1115; union grievance*, December 5, 1977. Dunn, Noble, Campbell — five pages. (55)

Overtime: company alleging Christmas scheduling exempt from normal scheduling procedures requiring one out of three weekends off; grievances dismissed. *Re Saugeen Memorial Hospital and Ontario Nurses' Association; Logan and Smith grievances*, November 30, 1977. Majority: Brown, Roffey — nine pages; dissent: Switzman — two pages. (56)

Seniority

Denial of bumping rights: whether company properly considering ability and qualifications of the grievor; grievance allowed. *Re Dominion Stores Limited and Retail Clerks' Union, Local 206; Bellisle grievance*, December 20, 1977. Majority: Rose, Strickland — three pages; dissent: White — two pages; addendum: Rose — one page. (57)

Transfer

Grievors alleging improper temporary transfer of part of a work crew to different department; grievance dismissed. *Re Alcan Products Limited and United Steelworkers of America, Local 7193; group grievance*, November 7, 1977. Majority: Shime, Ronson — six pages; did not concur: Grasso. (58)

Limited duration job: grievor having posted to a limited job and attempting to return to previous job before termination of limited job; grievance dismissed. *Re The International Nickel Company of Canada, Limited and United Steelworkers of America, Local 6500; Tremblay grievance*, December 14, 1977. Majority: Hinnegan, Wakely — seven pages; dissent: Carriere — two pages. (59)

Union Rights

Company paying non-union employees during shutdown but failing to pay union members: whether such action constituting discrimination against union; grievance dismissed. *Re Welland, Corporation of the City of, and Canadian Union of Public Employees* — see (55), *supra*. (60)

Union Security

Check-off: employer withholding increase in levy from union following objections from individual union members; whether increased levy within term "general assessments"; grievance allowed. *Re The Citizen (A Division of Southam Press Limited), Ottawa and The Ottawa Newspaper Guild, Local 205; union grievance*, November 7, 1977. Hinnegan, Dinsdale, Emond — seven pages. (61)

Authorization for voluntary deduction of dues: employer requiring employees to sign form in presence of company official and refusing to accept authorizations collected by union; grievance dismissed. *Re Whitman Golden Limited and United Rubber, Cork, Linoleum and Plastic Workers of America, Local 1024; policy grievance*, December 7, 1977. Majority: A.M. Linden, McKeown — six pages; dissent: Wadden. (62)*

Vacation Pay

Entitlement: employer making pro rata reduction in pay for period during which grievors had leave of absence without pay; whether reduction consistent with past practice; grievances dismissed. *Re The Sudbury Board of Education and Canadian Union of Public Employees; Lafleche and Gosselin grievances*, undated. Lunney — nine pages. (63)

Vacations

Grievor on Workmen's Compensation as result of being injured on duty; whether company able to schedule vacation during period off work; whether grievor entitled to vacation and holiday pay in lieu; grievance allowed. *Re Niagara Regional Board of Commissioners of Police and Niagara Region Police Association; Chunick grievance*, November 30, 1977. Aggarwal — 17 pages. (64)

Scheduling: employer refusing to grant leave to grievor because of workload requirements; whether decision reasonable; grievance dismissed. *Re Ontario Hydro and Ontario Hydro Employees' Union* — see Vol. 7, 11 (35), *supra*. (65)

Entitlement: grievors having voluntarily transferred out of bargaining unit and then returning; whether able to claim earned leave credits for earlier years of service; grievances dismissed. *Re Ottawa Civic Hospital and Ontario Nurses' Association; Reeves and Bereza grievances*, November 14, 1977. Majority: Brent, Hamilton — six pages; dissent: Done. (66)*

Entitlement and scheduling: union claiming that employer cannot schedule vacations until employees have completed full year of service; grievance dismissed. *Re Seneca College and Ontario Public Service Employees Union; group grievance*, November 22, 1977. Brown, Weisbach, O'Kelly — 16 pages. (67)

Wages

Rate of pay: grievor claiming higher carpentry rate for work involving application of cork tiles to wall; grievance allowed. *Re British Leyland Motors Canada Limited and United Automobile Workers, Local 525; McCurdy grievance*, November 25, 1977. O'Shea — eight pages. (68)

Grievors temporarily re-assigned during changeover operation: whether entitled to their prevailing hourly rate during re-assignment; grievance allowed. *Re Budd Automotive Company of Canada Limited and United Automobile Workers, Local 1451; group grievance*, December 21, 1977. O'Shea — ten pages. (69)

Entitlement to annual increment: employer refusing increment to grievor; employer alleging unsatisfactory work performance; grievance allowed. *Re Cornwall, The Corporation of the City of, and The Office and Professional Employees International Union, Local 452; Dow grievance*, November 17, 1977. Majority: Willes, Rousseau — six pages; dissent: Whittaker — three pages. (70)

Commission rate: union claiming that sales to particular customer improperly classified as being subject to low commission payments; grievance dismissed. *Re Humpty Dumpty Foods Limited and Retail, Wholesale and Department Store Union, Local 461; Gervais grievance*, October 21, 1977. Majority: J.L. Roberts, O'Byrne — five pages; dissent: Spaxman — two pages; addendum: O'Byrne — one page. (71)

Underpayment: grievors claiming higher rate of pay applicable when assignment to lower job classification to avoid lay-off; collective agreement not specific; grievances dismissed. *Re National Elevator and Escalator Association and International Union of Elevator Constructors, Locals 90, 50 and 66; King, Courtman and Rose grievances*, November 8, 1977. O'Shea — 23 pages; appendices — 90 pages. (72)

Negotiated annual increase: union claiming increase to apply to transitional pay provisions which lasted more than a year before regular commission rates established; grievance allowed. *Re Store At Your Door Distributors (Windsor) Incorporated and Milk and Bread Drivers, Dairy Employees, Caterers and Allied Employees, Local 647; group grievance*, November 25, 1977. McLaren — 11 pages. (73)

Welfare Plans

Entitlement to weekly indemnity payments: whether grievor unable to work for valid medical reasons; whether company obligated to pay benefits where insurance company refusing; grievance allowed. *Re Inglis Limited and United Steelworkers of America; McKinnon grievance*, August 31, 1977. Ferguson — nine pages. (74)

Work Assignment

Collective agreement providing teachers not to be assigned supervision of pupils eating lunch at school; employer assigning teachers supervisory duties in school yard during lunch period; grievance dismissed. *Re Hamilton-Wentworth Roman Catholic Separate School Board and Ontario English Catholic Teachers' Association Hamilton-Wentworth Unit; group grievance*, November 10, 1977. Kennedy, Elder, Whelan — five pages. (75)

The following awards in interest arbitrations under The Hospital Labour Disputes Arbitration Act were also filed with the Commission during the month of December, 1977:

Hillsdale Nursing Home and Boot and Shoe Workers International Union, Ord. Nokes — 26 pages; dissent: Baker — one page.

Cassellholme Home for the Aged for the District of Nipissing East, The Board of Management of, and Canadian Union of Public Employees, Local 146, Ord. Walsh — six pages; dissent: Buckland.

The awards may be seen at the office of the Commission, 400 University Avenue, 14th floor, Toronto. Copies of awards may be obtained for a fee of 50 cents per page. Orders will be filled on receipt of an application and a cheque or money order payable to the Treasurer of Ontario for the applicable amount, which should be forwarded to: Cashier's Office, Ministry of Labour, 400 University Avenue, Toronto, Ontario M7A 1V6.

Filing Awards

The attention of chairmen of boards of arbitration and sole arbitrators is drawn to the provision of Section 6(2) of the Regulation, which reads: 6.—(2) Every arbitrator shall, within ten days of issuing an award, file a copy thereof with the Commission. This provision would apply to all arbitrators approved under The Ontario Labour-Management Arbitration Commission Act and regardless of whether they were appointed as chairmen or sole arbitrators pursuant to the Act, by the parties or by the Minister.

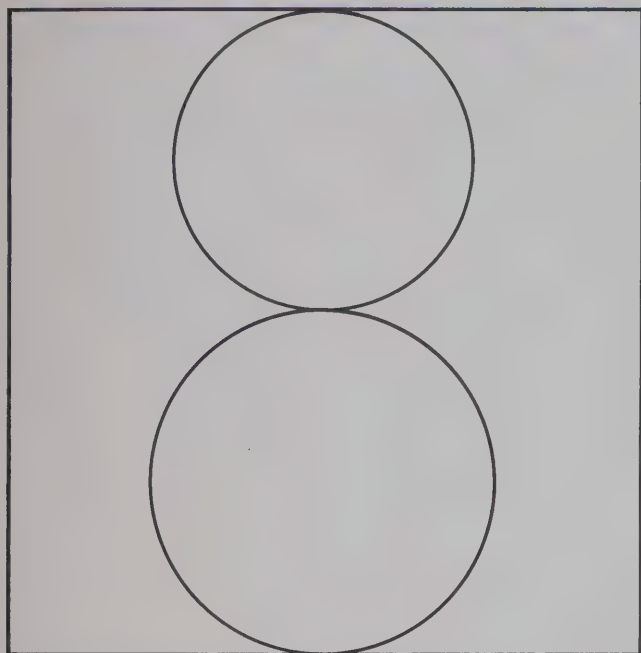
Mailing List

The Commission is preparing a comprehensive mailing list of persons interested in receiving the monthly Bulletin.

Anyone who wishes to be added to the list should write to the Commission stating the number of copies required.

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Monthly Bulletin



The Ontario Labour-Management
Arbitration Commission

His Honour Judge Walter Little, Chairman
Dorothy M. Johnson, Registrar

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Hon. Bette Stephenson, M.D., Minister
T.E. Armstrong, QC, Deputy Minister

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involved in labour-management
arbitrations.

Arbitrators

The following persons have been approved as chairmen of boards of arbitration of single arbitrators pursuant to The Ontario Labour-Management Arbitration Commission Act and Ontario Regulation 635:

Professor P.G. Barton, Faculty of Law, University of Western Ontario, London, Ontario, N6A 3K7; telephone (519) 679-2726.

Professor J.E. Roach, Faculty of Law, Common Law Section, University of Ottawa, Ottawa, Ontario, K1N 6N5; telephone (613) 231-4060.

Professor J.A. Willes, Dunning Hall, Queen's University, Kingston, Ontario, K7L 3N6; telephone (613) 547-5719.

The qualifications of the following persons are such that they meet the criteria laid down by the Commission, making them suitable persons to sit as sole arbitrators or chairmen of boards of arbitration, except that the criterion of mutual acceptability to unions and management has not been fully demonstrated. Although they may have had arbitration experience, they have not been mutually agreed upon a sufficient number of times in the past to enable them to be accredited for inclusion on panels. As soon as they meet this criterion they will be considered for full accreditation.

Darrell Draper, Q.C., 133 Richmond Street West, Toronto, Ontario, M5H 2L3; telephone (416) 366-9742.

Louissette Duchesneau-McLachlan, c/o McLachlan & Duchesneau-McLachlan, 222 McIntyre Street West, Suite 311, North Bay, Ontario, P1B 2Y8; telephone (705) 474-7500.

Change of Address and Telephone Number

The following change should be noted, effective immediately:

O.J. Godin, 411 — 1770 Paris Street, Sudbury, Ontario, P3E 3C3; telephone (705) 522-5985.

Awards

The following awards were filed with the Commission during the month of February, 1978, under Section 6(2) of Ontario Regulation 635, R.R.O. 1970.

The summary was prepared at the Faculty of Law, Queen's University, under the supervision of C.G. Simmons, B.A., B.C.L., LL.M., and R.S. Irwin, B.A., LL.M.

* Indicates award to be reported in full or in part in *Labour Arbitration Cases*.

Bargaining Unit

Seniority: grievor alleging an employee promoted to foreman was improperly returned to the bargaining unit, retaining seniority and displacing him; grievance dismissed. *Re Lake Ontario Steel Company Limited and United Steelworkers of America, Local 6571; unnamed grievance*, February 17, 1978. Majority: Shime, Smith — seven pages; dissent: Jones. (1)

Board of Arbitration

Appointment of nominee: union failing to name nominee in notice of intention to refer to arbitration; grievance arbitrable. *Re Kitchener Beverages Limited and The International Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers of America, Local 173; company grievance*, January 27, 1978. Interim award: majority: Brent, Petryshen — seven pages; dissent: Smith; addendum: Brent — one page. (2)

Nominee dying before having expressed an opinion on draft award written by Chairman: whether award should issue as final and binding award; award not to issue without consent of both parties. *Re Canadian Press and Broadcast News Limited and Canadian Wire Service Guild, Local 213; Hay grievance*, December 7, 1977. Beck — five pages. (3)

Classification

Review: employer refusing to establish and assess new classification alleged to have resulted from amalgamation of two classifications; whether grievance barred by union's delay in presenting it; grievance allowed. *Re Canadian Appliance Manufacturing Company Limited, GSW Appliances Division, and United Steelworkers of America, Local 3129; group grievance*, February 16, 1978. O'Shea — 19 pages. (4)

Contracting Out

Company assigning work previously performed by bargaining unit members to non-members; whether non-members employees or independent contractors; grievance allowed. *Re Renfrew County Board of Education and Canadian Union of Public Employees, Local 1247; union grievance*, December 16, 1977. Majority: Lunney, Purcell — six pages; dissent: Huckabone. (5)

Cost of Living Allowance

Entitlement to quarterly adjustment: union making claim for period after expiry of fixed term of agreement; parties having agreed that old agreement would operate during bargaining for renewal; grievance dismissed. *Re Rockwell International of Canada and International Molders' Union; policy grievance*, February 15, 1978. Majority: Burkett, Byers — 17 pages; dissent: Wohl. (6)

Demotion

Determination of loss of earnings sustained by successful grievor; whether incentive earnings from demotion period should be considered; compensation allowed. *Re Denison Mines Limited and United Steelworkers of America; Rodgers grievance*, February 22, 1978. Majority: O'Shea, Rogers — nine pages; did not concur: Keuhl. (7)

Discharge

Absence without leave: grievor failing to return from scheduled vacation period alleging illness as the cause; period of absence corresponding with period grievor would have been absent had previous request for leave of absence been granted; grievance dismissed. *Re York University and Canadian Union of Public Employees, Local 1356; Salvatore grievance*, January 30, 1978. Majority: O'Shea, Wakely — 22 pages; dissent: Turner — one page. (8)

Absent from work due to three month jail sentence; whether this an acceptable reason for being absent, and whether discrimination towards grievor or any mitigating circumstances existed; grievance dismissed. *Re Lake Ontario Steel Company Limited and United Steelworkers of America, Local 6571; Duncan grievance*, February 17, 1978. Abbott — 11 pages. (9)

Abuse of privilege: grievor flying first-class on economy ticket; misuse of procedure relating to reduced rate privileges alleged; reinstatement without compensation. *Re Air Canada and Canadian Air Line Flight Attendants Association; Herd grievance*, January 31, 1978. Weatherill — eight pages. (10)

Abusive conduct toward another company employee; past record of two written warnings; suspension substituted. *Re ITT Aimco Brake Products and United Steelworkers of America, Local 7574; Carrozza grievance*, undated. Brunner — 12 pages. (11)

Argumentative attitude: grievor continually causing problems with fellow employees and supervisors to extent of impairing employer's business; grievance dismissed. *Re Ideal Food Services Equipment and Sheet Metal Workers International Association, Stainless Steel Section, Local 30; Moss grievance*, February 9, 1978. Brown, Black, Kobryn — 15 pages. (12)

Breach of trust: grievor redeeming supplier coupons for cash for personal use contrary to company policy; suspension substituted. *Re Dominion Stores Limited and Retail, Wholesale and Department Store Union, Local 414; Leopardi grievance*, February 15, 1978. Majority: Brown, Spaxman — 17 pages; dissent: White — three pages. (13)

Company alleging grievors using company materials and time to manufacture parts for personal use; reinstatement with compensation. *Re Crown Cork and Seal Company Limited and Crown Cork and Seal Employees' Association; Aurora, Beswick grievances*, February 6, 1978. Majority: Burkett, Levinson — 11 pages; dissent: Werry — one page. (14)

Culminating incident: grievor falsifying amount of money to be reimbursed to him by company for purchase of work boots, and consideration of past poor disciplinary record; grievance dismissed. *Re The Quaker Oats Company of Canada Limited and Canadian Food and Allied Workers, Local P1172; Lavender grievance*, February 22, 1978. Majority: O'Shea, Storie — 12 pages; dissent: Leahy. (15)

Culminating incident: insubordination and abusive language directed at supervisor; suspension substituted. *Re Waferboard Corporation Limited and Lumbermen and Sawmill Workers Union, Local 2995; Rajkovic grievance*, January 22, 1978. Majority: McCulloch, Wren — 15 pages; dissent: Valin — one page. (16)

Culminating incident: poor driving record of grievor; employer alleging negligent operation of company truck; suspension substituted. *Re Holmes Insulation Company Limited and Holmes Insulation Limited Employees Association; McLam grievance*, January 3, 1978. Gorsky — four pages. (17)

Culminating incident: serious threat and abusive language directed at supervisor; grievance dismissed. *Re Haun Drop Forge Limited and United Automobile Workers, Local 275; Paquin grievance*, February 1, 1978. O'Connor — six pages. (18)

Culminating incident: unsatisfactory work performance; grievor's marital problems interfering with proper concentration on the job; suspension substituted. *Re Goodyear Canada Incorporated, New Toronto Factory and Central Distributing Warehouse and United Rubber, Cork, Linoleum and Plastic Workers of America, Local 232; Drinkle grievance*, February 6, 1978. McLaren — 11 pages. (19)

Damaging equipment: grievor continuing course of action directed by supervisor; continued activity causing damage to equipment; whether grievor negligent in not preventing damage; suspension substituted. *Re Humber Ready Mix Concrete Limited and Ready Mix, Building Supply, Hydro and Construction Drivers, Warehousemen and Helpers, Teamsters Local 230; Dunn grievance*, February 8, 1978. Majority: Springate, Beaulieu — ten pages; dissent: Fryzuk — one page. (20)*

Drinking on the job: grievor having past record of absenteeism due to drinking; grievor's long service record considered; grievance dismissed. *Re Disston (Canada) Limited and United Steelworkers of America, Local 8603; Jackson grievance*, February 20, 1978. O'Shea, Gareau, Freedman — 14 pages. (21)

Employee conduct: alleged insulting of a resident while grievor collecting garbage; suspension substituted. *Re Timmons, Corporation of the City of, and Canadian Union of Public Employees, Local 210; Demers grievance*, February 21, 1978. Majority: Dunn, Noble — six pages; dissent: Carriere — two pages. (22)

Excessive absenteeism: employer claiming non-punitive discharge but failing to prove that correction of attendance problem unlikely in the future; reinstatement with compensation. *Re J.M. Schneider Incorporated and Schneider Employees' Association; Strauss grievance*, February 9, 1978. Burkett, Riggs, Koskie — nine pages; addendum: Koskie — one page. (23)

Fraud: grievor producing false doctor's certificate for shift following holiday in order to receive holiday pay; grievor having been forewarned by employer of implications of such activity; grievance dismissed. *Re Wimco Steel Sales Company Limited and United Steelworkers of America; Hinkley grievance*, February 10, 1978. O'Shea — 12 pages. (24)

Grievor absent due to illness: Workmen's Compensation Board informing company and grievor that compensation to be denied; whether such information material so as to give rise to a duty on the grievor to notify company afresh of reasons for absence; grievance allowed. *Re Sunbeam Corporation (Canada) Limited and Federal Labour Union Number 24762; Macera grievance*, January 23, 1978. McLaren, Heather, Simon — 13 pages. (25)

Grievor refusing to comply with arrangements to return money advanced by company under benefit scheme after claim for compensation denied by Workmen's Compensation Board; company agreeing suspension pending compliance the proper penalty; grievance allowed in part. *Re BP Oil Limited and Oil, Chemical and Atomic Workers International Union, Local 9-599; Simmons grievance*, November 22, 1977. Kelly, Edwards, Healy — six pages. (26)

Grievor working on another job while on Workmen's Compensation leave from company; suspension substituted. *Re Standard Tube Canada Limited and United Automobile Workers, Local 636; Willms grievance*, January 30, 1978. O'Shea — 12 pages. (27)

Gross misconduct: grievor being found in secluded area of hospital with partially undressed young girl; grievor a shop steward and being unable to offer any rational innocent explanation; grievance dismissed. *Re St. Joseph's Hospital, Toronto and Canadian Union of Public Employees, Local 1144; Munro grievance*, February 10, 1978. O'Shea, Abrams, White — 14 pages. (28)

Illness: whether grievor unable to perform his watchman-janitorial duties due to illness causing falling; reinstatement without compensation. *Re Kingston, Corporation of the City of, and Canadian Union of Public Employees, Local 141; Gardiner grievance*, February 16, 1978. Simmons — 21 pages. (29)

Innocent absenteeism: grievor ready to return to work after injury, but physically incapable of occupying her old job; company having considered her for less strenuous position before dismissal; grievance allowed in part. *Re Canadian Cannery Limited, Can Plant No. 93, and International Association of Machinists and Aerospace Workers, Local 863; Mein grievance*, February 6, 1978. Majority: Brent, Tate — 17 pages; dissent: Wright; appendix — three pages. (30)

Insubordination: grievor refusing to do work assigned; suspension substituted. *Re E.B. Eddy Forest Products Limited and United Brotherhood of Carpenters and Joiners of America, Local 2693, Lumber and Sawmill Workers' Union; Corbierre grievance*, February 24, 1978. Adams, Sanderson, Wren — 11 pages. (31)

Insubordination: grievor refusing to follow direct order of foreman and subsequently swearing at foreman; grievance dismissed. *Re National Auto Radiator Manufacturing Company Limited and United Automobile Workers, Local 195; Mazza grievance*, February 15, 1978. O'Shea — 11 pages. (32)

Insubordination — safety: grievor refusing to comply with foreman's order to operate machine at full capacity; grievor alleging unsafe working conditions; suspension substituted. *Re Bridge and Tank Company of Canada, Limited and United Steelworkers of America, Local 2537; Thompson grievance*, February 8, 1978. O'Connor — 15 pages. (33)

Proper termination: no reason for termination given in notice to grievors contrary to employment contract and statute requirements; grievances allowed. *Re The Diocesan Roman Catholic High School Board of Metropolitan Windsor and Ontario English Catholic Teachers' Association; Vindischman et al grievances*, February 24, 1978. Majority: Kennedy, Levinson — 11 pages; dissent: Cusinato — nine pages; appendix: seven pages. (34)*

Proper termination notice for probationary employees: whether 90 day notice requirement included vacation time so long as it complied with *The Employment Standards Act*; grievance dismissed. *Re George Brown College of Applied Arts and Technology and Ontario Public Service Employees Union; group grievance*, February 27, 1978. Majority: Weatherill, Mason — eight pages; dissent: Trower — four pages. (35)*

Quit alleged: whether grievor possessing requisite continuing intention to resign; reinstatement with compensation. *Re Sunbeam Corporation (Canada) Limited and Federal Labour Union Number 24762; Brzozowski grievance*, January 31, 1978. Kennedy, Heather, Simon — 14 pages. (36)

Termination: grievor absent for cause for two years; grievor appearing when work offered, but unable to accept; grievance dismissed. *Re Inglis Limited and United Steelworkers of America, Local 2900; Faga grievance*, February 20, 1978. Kruger — four pages. (37)

Theft of company property: grievor appreciating the seriousness of his conduct and having a previously unblemished record; suspension substituted. *Re Air Canada and International Association of Machinists; Osbaldeston grievance*, February 7, 1978. Beck — 12 pages. (38)

Theft of company property: grievor's son removing scrap material without father's active participation; grievance allowed. *Re Kimberly-Clark of Canada Limited and Canadian Paperworkers National Union, Local 256; Gaouette grievance*, February 22, 1978. Majority: O'Shea, Stencer — 19 pages; dissent: Ronson. (39)

Unsatisfactory production: after repeated warnings about failure to achieve satisfactory standard, discharge imposed under publicized company rule; grievance dismissed. *Re Canada-Ferro Company Limited and United Automobile Workers, Local 1285; Sukara grievance*, February 3, 1978. Weatherill — eight pages. (40)

Unsatisfactory work performance: grievor failing to comply with standard product testing procedures; grievance allowed in part. *Re Phillips Cables Limited and United Steelworkers of America, Local 7276; Rowe grievance*, February 21, 1978. Adams — 11 pages. (41)

Discipline

Absence from work: grievor phoning in sick without verifiable explanation; grievance dismissed. *Re Keeprite Products Limited and Keeprite Workers' Independent Union; Cullinan grievance*, January 27, 1978. Fox — three pages. (42)

Careless work: grievor employed as an inspector and failing to spot a number of defective orders in short space of time; grievance dismissed. *Re Roto-Cast Limited and Canadian Chemical Workers Union, Local 2; Wange grievance*, February 2, 1978. Majority: O'Shea, Sparling — eight pages; dissent: McIlwain. (43)

Carelessness: grievor's driving alleged to have created a danger factor to other vehicles using city streets and to have caused excessive wear on equipment; grievance allowed. *Re Belleville, Corporation of the City of, and Canadian Union of Public Employees, Local 907; Goodfellow grievance*, January 11, 1978. Majority: Simmons, Wrightman — six pages; dissent: Smith — one page. (44)

Compulsory overtime: grievors refusing to perform scheduled overtime; grievors having previously accumulated voluntary overtime equal to compulsory overtime scheduled; grievance dismissed. *Re Bell Canada and Communications Workers of Canada; Kellington and Johns grievances*, February 20, 1978. Majority: Kates, Healy — 14 pages; did not concur: Walsh. (45)

Employee set on fire by another employee; company suspending entire workforce after being unable to establish guilty parties; whether necessary to ensure safety of workplace; grievance allowed. *Re Barber Hydraulic Turbine Limited and United Steelworkers of America; group grievance*, undated. Majority: Shime, Sharp — 24 pages; dissent: Curry — two pages. (46)

Failing to give notification of lateness to employer: whether reporting-in requirement applicable in case of lateness as opposed to absence from work; grievance dismissed. *Re Northern Telecom and United Automobile Workers, Local 27; Wells grievance*, January 25, 1978. Gorsky — nine pages. (47)

Insubordination: grievor leaving work early after being advised in writing by supervisors that his request to do so was denied; grievance dismissed. *Re Bonar and Bemis Limited and United Steelworkers of America, Local 8401; Nagey grievance*, February 16, 1978. O'Shea — 20 pages. (48)

Insubordination: failing to provide required nursing care; whether obey and grieve rule is applicable in a hospital environment; grievance dismissed. *Re Mount Sinai Hospital and Ontario Nurses' Association; Menchetti, Cooney and Jacob grievances*, February 16, 1978. Majority: Brandt, Robinson — 42 pages; dissent: Walsh — 15 pages. (49)*

Neglect of duties: grievor failing to fix machine during shift; whether failure a neglect of duty or a proper exercise of grievor's discretion in determining work priorities; grievance allowed. *Re Wabasso Limited, Empire Division and United Textile Workers of America, Local 155; Beaudoin grievance*, February 15, 1978. Majority: O'Shea, Bouchard — eight pages; dissent: Irwin — three pages. (50)

Sabotage: grievor apprehended while disconnecting electrical circuit affecting operation of machinery; grievance dismissed. *Re Budd Automotive Company of Canada Limited and United Automobile Workers, Local 1451; Groves grievance*, February 8, 1978. Brown — 16 pages. (51)

Sabotage: grievor wilfully damaging company equipment in order to create stoppage in production; grievance dismissed. *Re Budd Automotive Company of Canada Limited and United Automobile Workers, Local 1451; MacIntyre grievance*, February 10, 1978. Brown — 15 pages. (52)

Evidence

Extrinsic evidence: whether ambiguity existing; whether doctrine of rectification could be applied to add to collective agreement; whether union estopped from relying on language of collective agreement; extrinsic evidence not admissible. *Re Crown Cork and Seal Company, Limited and Crown Cork and Seal Employees' Association; union grievance*, February 10, 1978. Interim award: Weatherill, Levinson, Murray — 13 pages. (53)

Seniority: company denying grievor opportunity to refuse to accept job assignment; whether evidence of past practice concerning assignment of duties admissible; grievance allowed. *Re Chrysler Canada Limited and Canadian Union of Operating Engineers, Local 100; Debly grievance*, February 10, 1978. Brandt — eight pages. (54)

Grievance Procedure

Naming of nominee: union failing to follow procedure outlined in s.37(2) of *The Labour Relations Act*; whether company's earlier failure to reply to grievance precludes objection on this ground; grievance arbitrable. *Re Kitchener Beverages Limited and International Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers of America, Local 173; anonymous grievance*, February 7, 1978. Majority: Betcherman, Petryshen — six pages; dissent: Brown — five pages. (55)*

Time limits: union failing to abide by time limits concerning references to arbitration; grievance arbitrable. *Re Kitchener Beverages Limited and International Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers of America* — see (2), *supra*. (56)

Job Vacancy

Company filling vacancy with employee applying subsequent to grievor; whether grievor possessing necessary qualifications and ability entitling him to job as per collective agreement; grievance dismissed. *Re Dominion Stores Limited and United Steelworkers of America, Local 14045; Mills grievance*, February 14, 1978. Hinnegan — seven pages. (57)

Seniority: grievor contesting appointment of junior employee to a posted job; whether company required to consider seniority where vacancy in different department from those of the applicants; grievance dismissed. *Re Toronto East General and Orthopaedic Hospital Incorporated and Service Employees Union, Local 204; unnamed grievance*, February 7, 1978. Adams, Simon, Wakely — ten pages; addendum: Simon — one page. (58)

Lay-off

Company retaining junior employees while grievors laid off; whether grievors capable of performing available work; grievances allowed. *Re Herb Fraser and Associates, Limited and United Steelworkers of America, Local 7022; Isherwood, Marion grievances*, January 31, 1978. Shime, Gowan, Gonyou — five pages. (59)

Seniority: grievor laid off while junior employee retained; whether days laid off during probationary period constituted "days worked" under terms of collective agreement; reinstatement with compensation. *Re Wheatley Manufacturing Company Limited and United Automobile Workers, Local 195; Lavin grievance*, January 12, 1978. Gorsky — eight pages. (60)

Seniority: grievors working only four days per week while junior employees worked five days per week on special project; whether junior employees more efficient because of experience on project; grievance dismissed. *Re Wabasso Limited, Empire Division and United Textile Workers of America, Local 155; group grievance*, February 15, 1978. Majority: O'Shea, Irwin — seven pages; dissent: Bouchard. (61)

Seniority: whether grievor could fulfill requirements of junior teaching position at least equal to the junior employee to permit displacing the junior employee; grievance dismissed. *Re Confederation College of Applied Arts and Technology and Ontario Public Service Employees Union; Symanyk grievance*, February 27, 1978. Weatherill, Trower, Gretton — eight pages; addendum: Trower — six pages. (62)

Management Rights

Company unilaterally instituting change in pay method from cheque distribution to bank deposit system; whether change unreasonable or in violation of collective agreement; grievance dismissed. *Re Valley East, Corporation of the Town of, and Canadian Union of Public Employees, Local 6; union grievance*, January 31, 1978. Majority: Godin, Valin — six pages; did not concur: McVey. (63)

Overtime

Company granting time off without pay to part-time employees scheduled to work overtime; whether violation of collective agreement; grievance dismissed. *Re Air Canada and Canadian Air Line Employees' Association; union grievance*, February 14, 1978. Hinnegan — eight pages. (64)

Distribution: Stewart alleging overtime assignment denied to him improperly under agreement allotting such work for purposes of representation; grievance allowed. *Re Budd Automotive Company of Canada Limited and United Automobile Workers, Local 1451; Dagenais grievance*, February 1, 1978. Brown — 11 pages. (65)

Premium Pay

Collective agreement providing for payment of night differential to employee on sick leave if employee would have received such differential had he been working; dispute as to number of shifts involving differential grievor would have worked during period of sick leave; grievance allowed. *Re Toronto Star Limited and Toronto Newspaper Guild, Local 87; Dorosh grievance*, February, 1978. Teplitsky, Tate, Budgeon — six pages. (66)

Supper allowance-entitlement: whether a minimum of one and one-half hours overtime is required for entitlement; grievance allowed. *Re Shopsy's Foods Limited and Canadian Food and Allied Workers, Local 175; policy grievance*, February 20, 1978. Majority: Dunn, Simon — four pages; dissent: Bertuzzi — two pages. (67)

Promotion

Qualifications: grievors not meeting minimum standard; outside candidate hired; grievances dismissed. *Re Canadian Broadcasting Corporation and Canadian Wire Service Guild, Local 213; Marsh and Harrison grievances*, December 12, 1977. Majority: Stewart, Healey — 15 pages; did not concur: Posen. (68)

Recall

Grievor previously exercising bumping rights to lower job classification to avoid lay-off; company recalling junior employee to fill new vacancy in higher classification; whether grievor possessing recall rights to higher classification; grievance dismissed. *Re Electrohome Limited and International Brotherhood of Electrical Workers, Local 2345; Levesque grievance*, January 31, 1978. Majority: O'Shea, Noonan — 11 pages; dissent: Ublansky — four pages. (69)

Scheduling of Work

Part-time employees: employer calling in junior employee to work on holiday; whether grievor capable of performing work; grievance allowed. *Re Dominion Stores Limited and Retail, Wholesale and Department Store Union, Local 414; Tetarenko grievance*, February 10, 1978. Majority: O'Shea, Spaxman — 12 pages; dissent: White — three pages. (70)

Sick Pay

Proof of illness: grievor claiming pay for absence alleged to be due to illness and objecting to warning by employer that medical certificates must be filed for future illnesses; whether employer's policy prohibited by agreement; grievance allowed. *Re The Joseph Brant Memorial Hospital and Canadian Union of Public Employees, Local 1065; Zawadski grievance*, February 3, 1978. O'Shea, Walsh, Dixon — 15 pages; addendum: Dixon — two pages. (71)

Staffing

Teachers claiming that the Board had not hired the required allotment of elementary affiliated teachers; whether "Teacher" having a meaning different from "teacher"; grievance dismissed. *Re The Board of Education of The Borough of North York and The Branch Affiliates of The Federation of Women Teachers' Associations of Ontario and The Ontario Public School Men Teachers' Federation; union grievance*, January 31, 1978. Majority: Kennedy, Stewart — 12 pages; dissent: Felker. (72)

Strike

Federation implementing "Pink Letter" embargo, advising members not to apply for or accept positions of responsibility, to protest proposed reorganization in secondary schools; whether such action constituting a strike; grievance allowed. *Re The Halton Board of Education and Ontario Secondary School Teachers' Federation, District 9; Board grievance*, January 31, 1978. Majority: Swan, Laidlaw — 19 pages; dissent: Posen — four pages. (73)*

Participation in October 14, 1976 "National Day of Protest"; whether constituting strike; whether exercise in free speech which could not be prohibited by provincial legislation; grievance allowed. *Re Consumers Glass Company Limited and United Glass and Ceramic Workers of North America, Local 200; company grievance*, February 15, 1978. Majority: Adams, Gray — 30 pages; dissent: Posen — four pages. (74)*

Transfer

Effect on rate of pay: grievors claiming rate of previous job because transfer only temporary; employer claiming permanent transfer given in lieu of lay-off; grievance allowed in part. *Re Lennox Industries (Canada) Limited and United Steelworkers of America, Local 7235; Nau and Montanez grievances*, February 15, 1978. Majority: Rubenstein, Martin — eight pages; dissent: Whittaker — nine pages. (75)

Request for transfer to same job in another store filed by grievor; whether existing transfer request entitling grievor to job in other store when vacancy arising; grievance dismissed. *Re Dominion Stores Limited and Retail, Wholesale and Department Store Union, Local 414; Reid grievance*, February 10, 1978. Majority: Curtis, White — seven pages; dissent: Wynter — one page. (76)

Travel Allowance

Entitlement: grievors claiming meal expenses for period spent at home base during transfer from one away-from-base job to another; whether claim permitted expressly in agreement or by existing privilege of employees; grievances allowed. *Re Northern Telecom Limited and Communications Workers of Canada, Local 4; Gray and Cruickshank grievances*, February 8, 1978. Beck — 13 pages. (77)

Union Rights

Company refusing to grant request for union leave of absence to enable grievor to campaign on behalf of New Democratic Party candidate; whether duties to be performed while on leave contemplated by objects of union as set forth in its constitution; grievance allowed. *Re Champion Spark Plug Company of Canada, Limited and United Automobile Workers, Local 195; Cooke grievance*, February 15, 1978. O'Shea — 16 pages. (78)

Union Security

Union demanding termination of employees failing or refusing to sign dues deduction authorization forms and payment from company of an amount equivalent to dues for those employees not deducted; grievance allowed. *Re Canron Limited Eastern Structural Division and Employees Association of Canron Limited; union grievance*, February 14, 1978. Dunn, von Veh, Caplan — seven pages. (79)

Vacation Pay

Calculation: collective agreement presenting ambiguity with respect to the date upon which entitlement was to vest; grievance dismissed. *Re Brantford Expositor and Toronto Newspaper Guild; Roper grievance*, January 24, 1978. Majority: Gorsky, Clawson — six pages; dissent: Tate. (80)

Entitlement: Whether grievor "in the employ of the company" during period of lay-off so as to meet service requirement for vacation pay bonus; grievance dismissed. *Re Falconbridge Nickel Mines Limited and Sudbury Mine, Mill and Smelter Workers Union, Local 598; Brabant grievance*, February 6, 1978. Weatherill — eight pages. (81)*

Vacations

Scheduling: grievor transferred after selecting and receiving approval for vacation dates at original location; whether entitled to those dates at new location; grievance dismissed. *Re Air Canada and Canadian Air Line Employees' Association; Trottier grievance*, February 15, 1978. Brown — ten pages. (82)

Wages

Applicable rate: grievors in charge of three man crews; whether responsibilities assigned qualifying for payment at supervisory rates; Winger — grievance allowed, Taylor, McNabb — grievances dismissed. *Re Ontario Hydro and Canadian Union of Public Employees, Ontario Hydro Employees Union, Local 1000; Winger et al grievances*, January 31, 1978. Majority: Brown, Hamilton — 17 pages; dissent: Goudge — four pages. (83)

Rate payable: grievor moving from regular part-time to casual part-time and back to regular part-time within collective agreement terms; grievance dismissed. *Re Scarborough Centenary Hospital Association and Ontario Nurses' Association; Proctor grievance*, February 17, 1978. Majority: Weatherill, Phelps — 11 pages; dissent: Walsh. (84)

Work Assignment

Company assigning work in grievor's classification to member of another bargaining unit; whether reasonable effort made to contact grievor first to offer assignment to him; grievance dismissed. *Re Jan Peters Limited and Teamsters Union, Local 879; Robinson grievance*, February 6, 1978. Weatherill, Hurd, Sanderson — five pages. (85)

Grievors alleging denial of seniority rights in bidding for equipment assignments; grievances dismissed. *Re Air Canada and Canadian Airline Pilots' Association; Lusher, Raschig grievances*, February 13, 1978. Majority: Brown, Riggan — 20 pages; dissent: Golden — eight pages. (86)

The following awards in interest arbitrations under *The Hospital Labour Disputes Arbitration Act* were also filed with the Commission during the month of February, 1978:

Christie Park Nursing Homes Limited and Service Employees Union, Local 204, Ord, Wren — 14 pages; dissent: Noonan — four pages.

Ottawa General Hospital and Ontario Nurses' Association, Burkett — 17 pages; partial dissents: Sanderson — six pages, Walsh — four pages.

Leisure World Nursing Homes Limited and Service Employees Union, Local 204, Brent, Simon — eight pages; partial dissent: Farrar — three pages.

Peterborough Civic Hospital (as part of Participating Hospitals, 36 in number) and Ontario Public Service Employees Union, Kruger, Blair, Wren — five pages.

Stormont, Dundas and Glengarry, Corporation of the United Counties of, (operating Glen Stor Dun Lodge, Cornwall) and Ontario Nurses' Association, Fraser, Walsh — 65 pages; dissent: Maguire — one page.

Toronto East General and Orthopaedic Hospital Incorporated and Ontario Nurses' Association, Burkett, Sanderson — 11 pages; partial dissent: Walsh — four pages.

Versa-Care Centre of Owen Sound, owned and operated by Versa-Care Centres of Ontario Limited and Ontario Nurses Association, Brown, Somerville — 24 pages; partial dissent: Switzman — two pages.

The awards may be seen at the office of the Commission, 400 University Avenue, 14th floor, Toronto. Copies of awards may be obtained for a fee of 50 cents per page. Orders will be filled on receipt of an application and a cheque or money order payable to the Treasurer of Ontario for the applicable amount, which should be forwarded to: Cashier's Office, Ministry of Labour, 400 University Avenue, Toronto, Ontario M7A 1V6.

Filing Awards

The attention of chairmen of boards of arbitration and sole arbitrators is drawn to the provision of Section 6(2) of the Regulation, which reads: 6.—(2) Every arbitrator shall, within ten days of issuing an award, file a copy thereof with the Commission. This provision would apply to all arbitrators approved under The Ontario Labour-Management Arbitration Commission Act and regardless of whether they were appointed as chairmen or sole arbitrators pursuant to the Act, by the parties or by the Minister.

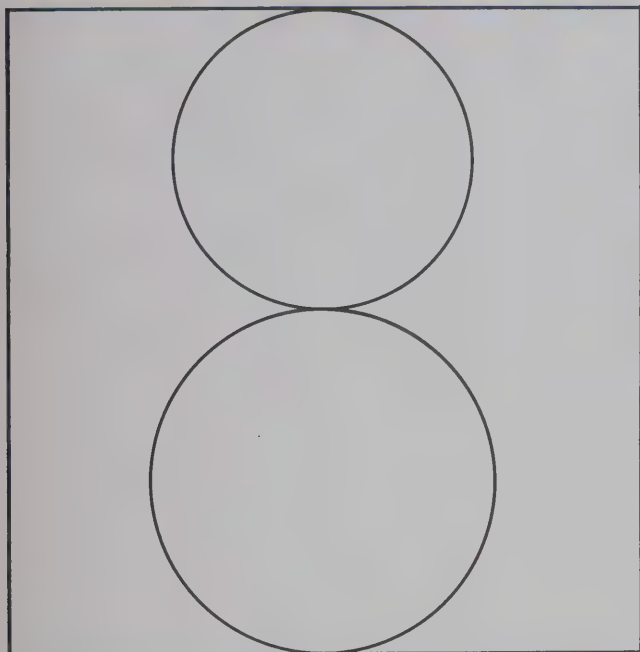
Mailing List

The Commission is preparing a comprehensive mailing list of persons interested in receiving the monthly Bulletin.

Anyone who wishes to be added to the list should write to the Commission stating the number of copies required.

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Monthly Bulletin



The Ontario Labour-Management
Arbitration Commission

His Honour Judge Walter Little, Chairman
Dorothy M. Johnson, Registrar

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Hon. Bette Stephenson, M.D., Minister
T.E. Armstrong, QC, Deputy Minister

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Arbitrators

The qualifications of the following persons are such that they meet the criteria laid down by the Commission, making them suitable persons to sit as sole arbitrators or chairmen of boards of arbitration, except that the criterion of mutual acceptability to unions and management has not been fully demonstrated. Although they may have had arbitration experience, they have not been mutually agreed upon a sufficient number of times in the past to enable them to be accredited for inclusion on panels. As soon as they meet this criterion they will be considered for full accreditation.

Ernest C. Potter, 44 Meadowcrest Road, Toronto, Ontario, M8Z 2Y7; telephone (416) 231-6333. (For arbitration cases under *The Hospital Labour Disputes Arbitration Act*).

W. Gerald Punnett, Barrister and Solicitor, 191 Norfolk Street, P.O. Box 431, Guelph, Ontario, N1H 6K5; telephone (519) 821-5840.

Change of Address and Telephone Number

The following change should be noted, effective July 1, 1978: George W. Adams, c/o Messrs. Cassels, Brock, Barristers and Solicitors, 165 University Avenue, Toronto, Ontario, M5H 3C2; telephone (416) 364-0401.

Awards

The following awards were filed with the Commission during the month of March, 1978, under Section 6(2) of Ontario Regulation 635, R.R.O. 1970.

The summary was prepared at the Faculty of Law, Queen's University, under the supervision of C.G. Simmons, B.A., B.C.L., LL.M., and R.S. Irwin, B.A., LL.M.

*Indicates award to be reported in full or in part in *Labour Arbitration Cases*.

Arbitrability

Claim under welfare plan: collective agreement provided for welfare plan but no particulars; grievance not arbitrable. *Re Molson's Brewery (Ontario) Limited and Canadian Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers, Local 304; Povraznik grievance*, March 4, 1978. Curtis — six pages. (1)*

Timeliness: employer arguing that disability benefits grievance not presented within mandatory time period and that employer did not waive right to object to timeliness; grievance arbitrable. *Re Whitby, Corporation of the Town of, and International Association of Fire Fighters, Local 2036; Badgley grievance*, March 29, 1978. Interim award: Brown — 12 pages. (2)

Bargaining Unit

Management performing bargaining unit work: managerial personnel training new operators; employer alleging such instruction part of training programme for managerial position held by instructor; grievance dismissed. *Re Bell Canada and Communications Union of Canada; policy grievance*, February 22, 1978. Majority: Brown, Gray — 28 pages; dissent: Walsh. (3)

Scope: union claiming inclusion of Gas Measurement Technicians and seeking deduction of union dues; ambiguity in collective agreement; grievance dismissed. *Re Union Gas Limited and Canadian Chemical Workers' Union, Local 6; policy grievance*, March 7, 1978. Majority: Weatherill, Storie — eight pages; did not concur: Wohl. (4)

Scope: union claiming inclusion of personnel sent on a temporary basis by an independent employment agency; grievance dismissed. *Re Reed Decorative Products Limited and Canadian Paperworkers Union, Local 304; policy grievance*, March 6, 1978. Majority: Brown, Easdale — 14 pages; dissent: Paxton — one page. (5)

Supervisory personnel performing bargaining unit work during vacation shut-down of plant; collective agreement indicating employer intention not to use non-bargaining unit personnel to perform such work during vacation shut-down; Fallowfield grievance allowed; Moore grievance dismissed. *Re Holophane Company Limited and International Union of Electrical, Radio and Machine Workers, Local 540; Fallowfield, Moore grievances*, March 3, 1978. Majority: Dunn, Wilson — six pages; dissent: Aslin — three pages. (6)*

Bereavement Pay

Entitlement: whether employer having discretion under the collective agreement to grant leave according to necessity; whether grievor "attending the funeral" or "assisting in arrangements for the funeral" on days claimed; grievance dismissed. *Re St. Thomas-Elgin General Hospital and London and District Service Workers' Union, Local 220; Freeman grievance*, March 7, 1978. Majority: Dunn, Farrar — nine pages; dissent: Switzman. (7)

Classification

Classification for salary purposes based on number of school "rooms"; whether "room" to be interpreted in a physical or a functional sense; grievance allowed. *Re Halton Roman Catholic Separate School Board and Halton Roman Catholic Separate School Board Branch Affiliates; Butt grievance*, December 16, 1977. Majority: Kennedy, Konkin — seven pages; dissent: Watters — one page. (8)

Whether new job classification was identical to an existing job classification of a higher labour grade on a comparison of individual job factors and therefore justifying upgrading; grievance dismissed. *Re Westinghouse Canada Limited and United Electrical, Radio and Machine Workers of America, Local 549; union grievance*, March 17, 1978. Majority: Brent, Wright — eight pages; dissent: Bosnich; appendix — eight pages. (9)

Temporary employees: whether employees hired as temporary during peak production period to be automatically reclassified as regular or probationary on expiration of that period; grievance dismissed. *Re Molson's Brewery (Ontario) Limited, Barrie Plant and Canadian Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers of America, Local 306; union grievance*, March 13, 1978. Brown — 14 pages. (10)

Contracting Out

Maintenance work: company contracting out after union refused to agree to low rate of pay for specific job; whether contract *bona-fide* and not prohibited by agreement; grievance dismissed. *Re Fisher Controls Company of Canada Limited and United Automobile Workers, Local 636; Force grievance*, March 28, 1978. Majority: Curtis, Binning — ten pages; dissent: Cooper — one page. (11)

Cost of Living Allowance

Sick leave benefits: whether cost of living allowance clause applicable to payments received by grievor during sick leave; grievance allowed. *Re Wheatley Manufacturing Company Limited and United Automobile Workers, Local 195; McFadden grievance*, February 13, 1978. S.B. Linden — four pages. (12)*

Damages

Parties unable to agree on quantum of damages on reinstatement of grievor following discharge without just cause; whether grievor made reasonable efforts to mitigate loss; whether union made reasonable efforts to find job for grievor; grievance allowed. *Re Parkwood Hospital, The Women's Christian Association of London and London and District Building Service Workers' Union, Local 220; Chambers grievance*, March 9, 1978. Majority: Johnston, Walsh — 16 pages; dissent: Adamson. (13)

Discharge

Absence without leave: grievor failing to return on date specified after leave of absence; grievor not seeking extension and having history of excessive absenteeism; grievance dismissed. *Re Wabco-Standard Limited, Solarware Division, and United Steelworkers of America, Local 2000; Sidhu grievance*, March 22, 1978. Hinnegan — six pages. (14)

Culminating incident: absence from work station; grievor having received suspension for similar incident two months earlier; grievance dismissed. *Re Steel Company of Canada Limited, Hilton Works and United Steelworkers of America, Local 1105; Moulton grievance*, March 23, 1978. Majority: McLaren, Murray — ten pages; dissent: Shell. (15)

Culminating incident: excessive absenteeism, prior disciplinary record; employer alleging grievor likely to instigate illegal work stoppages; grievance dismissed. *Re Budd Automotive Company of Canada Limited and United Automobile Workers, Local 1451; Riordan grievance*, March 1, 1978. Brown — 11 pages. (16)

Culminating incident: failure to report for work; grievor alleging grogginess induced by sleeping pills; history of excessive absenteeism; grievance dismissed. *Re Canada Packers Limited and Canadian Food and Allied Workers Union; McCarthy grievance*, March 3, 1978. Majority: Rayner, Williamson — seven pages; dissent: Stoodley. (17)

Culminating incident: grievor leaving work early despite denial of permission by employer; chronic absenteeism, no reasonable justification; grievance dismissed. *Re Livingston Industries Limited and International Woodworkers of America; Conrad grievance*, March 2, 1978. Majority: Rayner, Piroth — five pages; dissent: Smiley. (18)

Culminating incident: grievor leaving work early despite denial of permission by employer; frequent absenteeism, propensity to leaving work without good reason; grievance dismissed. *Re Metro Toronto News Company and Warehousemen and Miscellaneous Drivers Union, Local 419; Pritchett grievance*, February 28, 1978. Springate, Murray, Teichmann — 12 pages. (19)

Culminating incident: using improper procedure in cashing customer cheque; whether prior employment record can be considered in discipline; reinstatement with compensation. *Re Dominion Stores Limited and Retail, Wholesale and Department Store Union, Local 414; Babcock grievance*, February 27, 1978. Majority: Kennedy, White, Spaxman — seven pages; addendum: White — one page. (20)

Damage caused by grievor's carelessness in operation of machine; history of discipline for improper work performance; grievance dismissed. *Re Newman Steel Limited and United Steelworkers of America, Local 8214; Clausen grievance*, March 8, 1978. Rayner — ten pages. (21)

Dangerous chemical poured on floor of supervisor's office rendering office unusable for five to six weeks; whether evidence establishing on balance of probabilities the identity of the grievors as the persons responsible, reinstatement with compensation. *Re Canadian Hanson Limited and United Steelworkers of America, Local 14183; Callaghan, Joudvisis grievances*, March 16, 1978. Majority: Kennedy, Grasso — ten pages; dissent: Drmaj — four pages. (22)

Disregarding or forgetting normal work and safety instructions in first month following probationary period without corrective discipline before discharge; discipline substituted. *Re Cyanamid of Canada Limited and Canadian Chemical Workers Union, Local 21; Konyi grievance*, March 15, 1978. Hinnegan, Morley, Pratt — eight pages. (23)

Excessive absenteeism: grievor failing to inform company of required absence and reason for it, grievance dismissed. *Re Falconbridge Copper Limited, Operator, Sturgeon Lake Joint Venture and Sudbury Mine, Mill and Smelter Workers Union, Sturgeon Lake Section; Greenough grievance*, March 13, 1978. Brown — 11 pages. (24)

Falsification of medical certificates: grievor discharged and sent home prior to completion of full investigation of details of offence alleged, whether company action justified on basis of potential danger to grievor or other employees posed by his retention; *Re Budd Automotive Company of Canada Limited and United Automobile Workers, Local 1451; St. Micheal grievance*, March 15, 1978. Brown — nine pages. (25)

Fighting: grievors resorting to fists in dispute over whether window should be open or shut, grievors having long and relatively good work records, reinstatement without compensation. *Re Franklin Manufacturing Company (Canada) Limited and International Association of Machinists and Aerospace Workers, Local 1246; Batista and Cabral grievances*, March 22, 1978. Weatherill, Jardine, Sargeant — seven pages. (26)

Grievors engaging in deliberate slow down to protest job rates, grievances dismissed. *Re Bilt-Rite Upholstering Company Limited and Upholsterer's International Union of North America; Perito, Martino grievances*, March 6, 1978. Rayner — 11 pages. (27)

Grievor refusing request by safety director to wear safety hat on job site, grievor previously reprimanded for failure to obey instructions; grievances dismissed. *Re Concrete Construction Supplies of Windsor Limited and Teamsters, Chauffeurs, Warehousemen and Helpers Union, Local 880; O'Keefe grievances*, January 16, 1978. Majority: Stewart, Kavanaugh — 34 pages; dissent: Kobryn — 11 pages. (28)

Grievor refusing to cross picket line legally in place around company premises, Board considering previous awards on grievances arising out of same factual situation, suspension substituted. *Re Kitchener Beverages Limited and International Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers of America, Local 173; Scott grievance*, March 9, 1978. Majority: Rubenstein, Weaver — five pages; dissent: Roussel; addendum: Weaver — one page. (29)

Grievor refusing to wear safety glasses as required by plant rules; suspension substituted. *Re T.R.S. Food Service Limited and Retail, Wholesale, Dairy and General Workers' Union, Local 440; Boyse grievance*, January 25, 1978. Majority: J.L. Roberts, Sparling — seven pages; dissent: Spaxman — one page. (30)

Grievor retaliating after being struck by patient under his care; grievance dismissed. *Re Niagara, Regional Municipality of, and Canadian Union of Public Employees, Local 1263; Caldwell grievance*, February 22, 1978. Majority: J.L. Roberts, Bown — eight pages; dissent: Cooper — two pages. (31)

Grievor terminated as not employable because of physical injury; conflicting medical testimony about ability to perform job; reinstatement with compensation. *Re Fibreglas Canada Limited and Oil, Chemical and Atomic Workers International Union, Local 9-14; Horvath grievance*, February 27, 1978. R.J. Roberts — 12 pages. (32)

Improper workmanship: whether quality of work had fallen below the reasonable standard in the industry; grievance allowed. *Re Men's Clothing Manufacturers Association of Ontario and Toronto Joint Board Amalgamated Clothing and Textile Workers Union; Townsend and Brinkman grievances*, March 16, 1978. Shime — nine pages. (33)

Insubordination and tardiness: grievor continually complaining in disruptive manner about conversion of wages to piece rate and arriving late every day for two weeks; employer failing to warn grievor about possibility of discipline; reinstatement with limited compensation. *Re Canadian National Institute for The Blind and Service Employees Union (Industrial Shops Employees), Local 204; Evdoxiadis grievance*, March 21, 1978. Rose, Payette, Dollack — four pages. (34)

Insubordination: grievor using abusive language, threatening and attempting to assault foreman; grievance dismissed. *Re Massey-Ferguson Industries Limited and United Automobile Workers; Singh grievance*, February 28, 1978. Rayner — five pages. (35)

Medical fitness: grievor with seniority failing to meet company medical standards; grievor not currently suffering any disability; grievance allowed. *Re Highway Trailers of Canada Limited and International Molders' and Allied Workers' Union; Local 28; Graham grievance*, March 16, 1978. Springate — 11 pages. (36)

Misconduct alleged in hiring part-time help; grievor hiring relative who had previously been dismissed by the store and faced criminal charges for extortion from the store; suspension substituted. *Re Dominion Stores Limited and Retail, Wholesale and Department Store Union, Local 414; Graziano grievance*, March 8, 1978. Majority: Kennedy, Spaxman — ten pages; dissent: White. (37)

Negligence: grievor having serious accident in company's tractor-trailer; whether company precluded from imposing discipline by alleged partial responsibility in assigning grievor to work beyond his capacity; grievance dismissed. *Re Westroc Industries Limited and United Cement, Lime and Gypsum Workers International Union, Local 366; Long grievance*, March 29, 1978. Dunn — six pages. (38)

Possession and consumption of alcohol: foreman finding grievor with bottle; grievor trying to destroy evidence and subsequently accusing foreman of lying; grievance dismissed. *Re Rolland Paper Company Limited and Printing Specialties and Paper Products Union, Local 466; Peddle grievance*, March 29, 1978. Hinnegan, Kobryn, Grossman — six pages. (39)

Redeeming coupons in violation of company policy; one previous offense; suspension substituted. *Re Dominion Stores Limited and Retail, Wholesale and Department Store Union, Local 414; unnamed grievance*, March 7, 1978. Majority: Shime, Spaxman — ten pages; dissent: White — two pages. (40)

Wilful absence from work without permission and deliberate contravention of superior's orders and collective agreement re taking of vacation time, grievor dishonest in testifying; grievance dismissed. *Re Honeywell Limited and United Automobile Workers, Local 80; Tims grievance*, March 6, 1978. Majority: O'Shea, White — 16 pages; dissent: Weisbach — two pages. (41)

Wilful insubordination and absenteeism: grievor taking vacation during period in which he was not permitted to do so; grievance dismissed. *Re Inglis Limited and United Automobile Workers, Local 525; Turner grievance*, March 21, 1978. Majority: O'Shea, von Veh — 14 pages; dissent: Craig — one page. (42)

Discipline

Absence without leave: company relying on its posted policy on absenteeism; grievance allowed. *Re Sangamo Company Limited and International Association of Machinists and Aerospace Workers, Local 1744; Cooper grievance*, January 9, 1978. Majority: Rayner, Wren — eight pages; dissent: Wakely — four pages. (43)

Carelessness: company alleging grievor failed to clean coke oven door properly; grievance dismissed. *Re Steel Company of Canada Limited, Hilton Works and United Steelworkers of America, Local 1005; Spagnoletti grievance*, March 1, 1978. Majority: Johnston, Storie — eight pages; dissent: Warrian. (44)

Employer alleging failure to perform job properly: grievor directing abusive and threatening language towards supervisor when questioned; grievance allowed in part. *Re Budd Automotive Company of Canada Limited and United Automobile Workers, Local 1451; Steffler grievance*, March 1, 1978. Shime — 15 pages. (45)

Failure of grievor to report proper mileage allowance as provided under collective agreement; grievance dismissed. *Re Stormont, Dundas and Glengarry, Corporation of the United Counties of, and Canadian Union of Public Employees, Local 1715; Alguire grievance*, December 12, 1977. Roach, Bowman, Legault — six pages. (46)

Failure to follow proper wall bolting procedures creating safety hazard; grievance allowed in part. *Re Inco Limited and United Steelworkers of America, Local 6500; Renaud grievance*, February 8, 1978. Majority: Gorsky, Sanderson — 13 pages; dissent: Gerard. (47)

Fighting: grievor attacking fellow employee who was not disciplined for incident; whether company discriminated or correct in its assessment of grievor as aggressor; grievance dismissed. *Re Coca-Cola Limited and Canadian Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers; Kelly grievance*, March 28, 1978. Kennedy — six pages. (48)

Grievor entering plant under influence of alcohol: directing abusive and threatening language at supervisors; grievance dismissed. *Re Newman Structural Steel Limited and International Association of Bridge, Structural and Ornamental Iron Workers, Local 734; Cushman grievance*, March 9, 1978. Brown — 13 pages. (49)

Grievor refusing to submit to security search on "company premises" as provided by provision in collective agreement; grievance allowed in part. *Re Rothmans of Pall Mall Canada Limited and Tobacco Workers' International Union, Local 319; Snow grievance*, February 27, 1978. Zimmerman — 20 pages. (50)

Grievor verbally abusing fellow employee: no threat of physical violence; grievance allowed. *Re Parking Authority of Toronto and Canadian Union of Public Employees, Local 43; Morrison grievance*, February 6, 1978. Majority: Beck, Tate — eight pages; dissent: Freedman — four pages. (51)

Illness: whether rule requiring one hour's notice of intended absence from work applies to illness; grievance allowed. *Re Etobicoke, Corporation of the Borough of, and Etobicoke Professional Fire Fighters' Association, Local 1137; unnamed grievance*, March 21, 1978. Brent — eight pages. (52)

Insubordination: employee refusing to stay late to meet foreman; order to stay amounting to an order to work overtime without obtaining employee's consent; grievance allowed. *Re Atlas Steels and Canadian Steelworkers Union, Atlas Division; Crandall grievance*, March 17, 1978. Majority: Kennedy, Simpson — 15 pages; dissent: Henley — four pages; addendum: Simpson — one page. (53)

Insubordination: grievor refusing to meet with general foreman, hanging up phone on foreman while on off-duty hours; grievance allowed. *Re Atlas Steels and Canadian Steelworkers' Union* — see (53), *supra*. (54)

Insubordination and improper work attitude: grievor alleging harassment by employer; employer failing to investigate properly customer complaint before taking action; grievance allowed in part. *Re Bell Canada Limited and Communications Workers of Canada, Local 31; Ennis grievance*, February 28, 1978. Simmons — 21 pages. (55)

Striking another employee: whether provocation justified extreme reaction of grievor in striking another employee while at work, without regret, and hurting himself; grievance dismissed. *Re Atlas Steels and United Steelworkers of America; Ross grievance*, March 13, 1978. O'Shea — 13 pages. (56)

Unsafe act: careless breach of safety manual causing accident which employee failed to report; grievance dismissed. *Re Atlas Steels and Canadian Steelworkers Union* — see (53), *supra*. (57)

Evidence

Admissibility of extrinsic evidence: whether ambiguity latent or patent, whether silence in collective agreement is an ambiguity; grievance allowed. *Re Alliance Cannery Limited and Soft Drink Workers Joint Local Executive Board of Ontario; Doucette grievance*, February 23, 1978. Majority: S.B. Linden, Green — 12 pages; partial dissent: Freedman — five pages. (58)*

Compelability: employer seeking order from Board to compel Principal to divulge information, Principal refusing to discuss grievor teacher's record with employer; order refused. *Re Durham Board of Education and Ontario Secondary School Teachers' Federation, District #17; King grievance*, March 7, 1978. Interim award: Weatherill, Thiesson, Stewart — five pages. (59)*

Grievance Procedure

Formal requirements: union failing to give notice of grievance within the time limits and according to the procedures of the collective agreement; whether Board's jurisdiction under section 37 (5a) of *The Labour Relations Act* should be invoked to relieve against time limit missed; grievance not arbitrable. *Re Victoria Soya Mills and International Chemical Workers Union, Local 247; Miller grievance*, March 6, 1978. Majority: Brown, Farrar — 12 pages; dissent: Wilson — two pages. (60)

Formal requirements: whether grievances are a group of individual grievances or are union policy grievances; whether grievances properly before the Board in the form in which they were filed; whether grievance was of a continuing nature so as to obviate the time limits set out in the collective agreement; grievance not arbitrable. *Re Shaver Hospital for Chest Diseases and Ontario Nurses' Association, Local 122; policy grievance*, March 7, 1978. Majority: Hinnegan, Dixon — 15 pages; dissent: Switzman. (61)

Standing: employees claiming standing in arbitration concerning disposal of deducted union dues held in trust by employer after local union placed under trusteeship; request for standing denied. *Re Hartz Mountain Pet Supplies Limited and International Chemical Workers Union, Local 618; policy grievance*, March 2, 1978. Egan — 15 pages. (62)

Health Insurance Plans

Company contribution to OHIP: whether the percentage the company had promised in the collective agreement applied to the new, augmented OHIP rates; grievance dismissed. *Re Metropolitan Toronto Separate School Board and Ontario English Catholic Teachers' Association; union grievance*, February 28, 1978. Majority: Curtis, Gordon — 12 pages; dissent: Koskie — 23 pages. (63)

Holiday Pay

Collective agreement providing that payment for statutory holidays to be made at employee's "regular straight time hourly rate": whether shift premium to be considered as part of such rate; grievance dismissed. *Re Standard Tube Canada Limited and Standard Tube Employees Trade Union, United Automobile Workers, Local 1965; union grievance*, March 10, 1978. Hinnegan — five pages. (64)

Holidays

Effect of illness: grievor claiming additional day off with pay because reason she did not work on holiday was illness; grievance dismissed. *Re Bell Canada and Canadian Telephone Employees' Association; Khan grievance*, March 28, 1978. Weatherill — 11 pages. (65)*

Hours of Work

Right to work day shift: grievor being assigned to afternoon shift contrary to provision in agreement; whether entitled to overtime for hours worked after 6 p.m.; grievance allowed. *Re Ottawa Citizen and Ottawa Newspaper Guild, Local 205; Hartnett grievance*, March 21, 1978. Majority: Brown, Rupert — 13 pages; dissent: Cook — three pages. (66)*

Job Posting

Qualifications: grievor failing to bring to the attention of the company during his interview his qualifications; grievance dismissed. *Re Dahmer Steel Limited and United Steelworkers of America, Local 7138; McKellar grievance*, February 28, 1978. O'Shea — 12 pages. (67)

Job Vacancy

Improper removal from temporary job vacancy alleged: employer claiming unsatisfactory job performance, insufficient communication with supervision; grievance dismissed. *Re Steel Company of Canada, Limited, Hilton Works and United Steelworkers of America, Local 1005; Currie grievance*, February 27, 1978. Majority: Brent, Beresford — 24 pages; dissent: Warrian. (68)

Lay-off

Length of notice: whether section 60(1)(b) of *Canada Labour Code* notice (12 weeks) applies re notice to individual employees in a lay-off of 149 employees when represented by a union; grievance dismissed. *Re Northern Telecom Limited and Communications Workers of Canada, Local 4; union grievance*, February 27, 1978. Brunner — 15 pages. (69)

Seniority: grievor seeking to displace another employee and show equal experience, skill and suitability for the job through his employment; grievance dismissed. *Re Confederation College and Ontario Public Service Employees Union; Nalezty grievance*, March 21, 1978. Majority: O'Shea, Gretton — 12 pages; dissent: Jecchinis — five pages; appendix — four pages. (70)

Overtime

Distribution: grievor claiming that all overtime relief work should be performed by employees who normally do relief work; whether "relief work" a classification under agreement and whether grievor's claim inconsistent with employer's power to maintain efficiency; grievance dismissed. *Re Borg-Warner (Canada) Limited, Long Manufacturing Division and International Association of Machinists and Aerospace Workers, Local 2330; Vanderwelle grievance*, March 29, 1978. Majority: Burkett, Boehmer — 11 pages; dissent: Hamilton — two pages. (71)

Distribution: overtime allotted to employee outside classification of employees regularly assigned to the work; whether violation of collective agreement; grievance allowed. *Re Canron Limited, Pipe Division and International Molders' and Allied Workers' Union, Local 64; Verkaik grievance*, January 9, 1978. Ord — seven pages. (72)

Distribution: whether regular rating of employee under collective agreement takes priority in work assignment over alternate rated employees; grievance allowed. *Re Toronto, Municipality of Metropolitan and Canadian Union of Public Employees, Local 43; O'Reilly grievance*, January 16, 1978. Majority: Ord, Tate — eight pages; dissent: Perron — five pages. (73)

Premium Pay

Entitlement: whether by collective agreement a service supplement was payable on same terms and conditions as vacation pay which company had paid on winding up business; grievance allowed. *Re N. Abbott Limited and International Ladies' Garment Workers' Union, Locals 72, 192, 199; union grievance*, March 7, 1978. Shime — six pages. (74)

Union challenging company computation of bonus rate; method of calculating bonus payable not specifically contained in collective agreement; grievance dismissed. *Re Metal Shapes Limited and United Automobile Workers, Local 636; policy grievance*, October 12, 1977. Ord — seven pages. (75)

Promotion

Criteria necessary for employee to meet the normal requirements of the work assigned; whether grievor must have immediate ability; difference between a training period and a period of familiarization; grievance allowed. *Re Alliance Cannery Limited and Soft Drink Workers Joint Local Executive Board of Ontario* — see (58), *supra*. (76)*

Qualifications: whether employer having a reasonable basis to conclude that grievor unreliable, undependable or immature; whether moving from job to job under the collective agreement an undesirable trait; grievance allowed. *Re Raybestos-Manhattan (Canada) Limited and United Steelworkers of America, Local 5141; DeLaire grievance*, March 6, 1978. Hinnegan — seven pages. (77)*

Qualifications: whether grievor's managerial and leadership skills relatively equal to successful junior applicant; grievance dismissed. *Re Toronto East General and Orthopaedic Hospital Incorporated and Ontario Nurses' Association; McGowan grievance*, January 15, 1978. Majority: Roberts, Filion — 18 pages; dissent: Switzman — three pages. (78)

Qualifications and seniority: standards of employee evaluation must relate to job vacancy within the bargaining unit and not be measured against qualities required for jobs outside bargaining unit even though first job is stepping stone to second; grievance allowed. *Re Denison Mines Limited and United Steelworkers of America, Local 5762; Vandenberg grievance*, March 16, 1978. Egan — seven pages. (79)

Recall

Entitlement: grievor claiming non-bargaining unit employee performing bargaining unit work; whether extent of work brought employee within bargaining unit; grievance dismissed. *Re Anthes Equipment Limited, Metropolitan Toronto Branch and Warehousemen and Miscellaneous Drivers Union, Local 419; Ukrainetz grievance*, March 22, 1978. Majority: Burkett, Binning — 11 pages; dissent: Floyd. (80)

Seniority: junior employee in higher classification than grievor performing work on temporary basis in grievor's classification; grievance dismissed. *Re Carrington's Building Centre Limited and United Brotherhood of Carpenters and Joiners of America, Local 2486; Cote grievance*, December 16, 1977. Majority: Lunney, Valin — four pages; dissent: Popovich — three pages. (81)

Scheduling of Work

Ability to work night shift: grievor producing medical certificate indicating incapacity for night shift; whether employer can force grievor to take sick leave pending production of certificate indicating ability to work all shifts; grievance allowed. *Re St. Thomas, Corporation of the City of, and London and District Service Workers Union; Matisko grievance*, March 22, 1978. Majority: R.J. Roberts, Switzman — five pages; dissent: Healy — two pages. (82)

Part-time employee: company failing to schedule according to seniority; grievor seeking payment for "lost" hours rather than re-scheduling to make up hours lost; grievance dismissed. *Re Dominion Stores Limited and Retail, Wholesale and Department Store Union, Local 545; Pasquino grievance*, February 27, 1978; Majority: Brown, Sargeant — seven pages; did not concur: Lachance. (83)

Union rights: grievor seeking release time from teaching duties to attend to union business; whether collective agreement obligating employer to provide replacement for grievor rather than re-schedule classes; grievance dismissed. *Re Fanshawe College of Applied Arts and Technology and Ontario Public Service Employees' Union; Rachar grievance*, February 28, 1978. Majority: Brandt, Correll — 14 pages; dissent: Trower — six pages. (84)

Seniority

Accumulation: employer terminating grievor's employment, union claiming accumulation of seniority in case of compensable injuries not restricted by section relating to absences in excess of year; grievance dismissed. *Re Windsor Western Hospital Centre and Ontario Nurses' Association; policy grievance*, February 27, 1978. Majority: Brown, Bartlet — 11 pages; dissent: Symes — three pages. (85)

Call-in and scheduling of part-time employees: employer calling in junior employee when grievor available; grievor alleging right to work maximum part-time hours before junior employee called in; grievance dismissed. *Re Dominion Stores Limited and Retail, Wholesale and Department Store Union, Local 414; Healy grievance*, February 28, 1978. Majority: Weatherill, White — eight pages; dissent: Barron — one page. (86)*

Transfer: two permanent employees exchanging job shifts; one of the employees being junior to the grievor who was in a lower-rated job; grievance dismissed. *Re Dominion Textile Limited and United Textile Workers of America; Demontigny grievance*, March 20, 1978. Majority: Weatherill, Dufort — four pages; dissent: Bouchard — three pages. (87)

Vacation pay: whether employee being re-employed receiving vacation period as if employment period was unbroken was breach of seniority provisions — meaning of "company service"; grievance dismissed. *Re Sun Oil Company and Sarnia Logistics Employees' Association of Sun Oil Company Limited; association grievance*, March 17, 1978. Hinnegan — four pages. (88)

Sick Leave

Discipline imposed by employer: employer alleging improper use of sick leave, fraud by grievor; grievance allowed. *Re Stormont, Dundas and Glengarry, Corporation of the United Counties of, and Canadian Union of Public Employees, Local 1715; Alguire grievance*, December 12, 1977. Roach, Bowman, Legault — ten pages. (89)

Returning to work: grievor failing to comply with company policy of notifying supervisor and being sent home because substitute hired; whether company policy proper; grievance dismissed. *Re Temiskaming Hospitals and Canadian Union of Public Employees; Deveault grievance*, December 16, 1977. Lunney, Buckland, Belanger — nine pages. (90)

Sick Pay

Entitlement: grievor suffering from pregnancy-related illness; whether maternity leave or sick pay benefit should apply; grievance allowed. *Re Hotel Dieu Hospital, Kingston and Ontario Public Service Employees Union; Carmichael grievance*, March 2, 1978. Majority: McLaren, Cochrane — 13 pages; dissent: Pike — two pages. (91)*

Transfer

Company transferring junior employee to higher job classification for temporary period; whether transfer to be effected in accordance with seniority rights; grievance dismissed. *Re Canron Limited, Pipe Division and International Molders' and Allied Workers' Union, Local 64; Rulli grievance*, January 9, 1978. Ord — 11 pages. (92)

Qualifications: employer awarding job to a junior employee; employer alleging grievor had a high rate of absenteeism and a history of back trouble; grievance allowed. *Re Toronto Western Hospital and Canadian Union of Public Employees, Local 1744; Wahid grievance*, March 7, 1978. Majority: Kennedy, Bird — 19 pages; dissent: Farrar. (93)

The awards may be seen at the office of the Commission, 400 University Avenue, 14th floor, Toronto. Copies of awards may be obtained for a fee of 50 cents per page. Orders will be filled on receipt of an application and a cheque or money order payable to the Treasurer of Ontario for the applicable amount, which should be forwarded to: Cashier's Office, Ministry of Labour, 400 University Avenue, Toronto, Ontario M7A 1V6.

Filing Awards

The attention of chairmen of boards of arbitration and sole arbitrators is drawn to the provision of Section 6(2) of the Regulation, which reads: 6.—(2) Every arbitrator shall, within ten days of issuing an award, file a copy thereof with the Commission. This provision would apply to all arbitrators approved under The Ontario Labour-Management Arbitration Commission Act and regardless of whether they were appointed as chairmen or sole arbitrators pursuant to the Act, by the parties or by the Minister.

Mailing List

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Monthly Bulletin



Ontario

The Ontario Labour-Management
Arbitration Commission

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Awards

The following awards were filed with the Commission during the month of April, 1978, under Section 6(2) of Ontario Regulation 635, R.R.O. 1970.

The summary was prepared at the Faculty of Law, Queen's University, under the supervision of C.G. Simmons, B.A., B.C.L., LL.M., and K.P. Swan, B.Eng., LL.M.

* Indicates award to be reported in full or in part in *Labour Arbitration Cases*.

Arbitrability

Grievor purporting to withdraw offer of resignation before its acceptance by employer and grievor denying resignation made voluntarily: whether exclusive procedures applicable to discipline and dismissal under *The Police Act* ousting jurisdiction of Arbitrator to consider whether resignation or dismissal effective; grievance arbitrable. *Re Board of Commissioners of Police of Metropolitan Toronto and The Metropolitan Toronto Police Association; Saswirsky grievance*, April 18, 1978. Adams — 63 pages. (1)*

Bargaining Unit

Grievor claiming violations of clause prohibiting the performance of routine manual store work by supply salesmen in the store; company not directing or having knowledge of salesmen's activities; grievances dismissed. *Re Dominion Stores Limited and Retail, Wholesale and Department Store Union, Local 414; Middleton grievances*, April 17, 1978. Majority: O'Shea, White — 11 pages; dissent: Dahmer — two pages. (2)

Performance of bargaining unit work by management personnel: union alleging foremen promoted out of bargaining unit now performing work within bargaining unit; grievance dismissed. *Re Ontario Hydro and The Canadian Union of Operating Engineers; union grievance*, April 14, 1978. Majority: Weatherill, MacCarthy — 11 pages; dissent: Herman — eight pages. (3)

Scope: company denying that employees of new manufacturing unit covered by collective agreement; new unit operated by company as a separate entity; grievance allowed. *Re Inco Limited and United Steelworkers of America; union grievance*, April 12, 1978. Majority: O'Shea, Burrows — 42 pages; dissent: Gilmore — two pages. (4)

Scope: company instituting administrative changes in company structure, moving newly created separate division to new location; whether employees moved remaining within bargaining unit covered by collective agreement, grievance allowed. *Re Canadian Pittsburgh Industries and Canadian Chemical Workers' Union, Local 14; union grievance*, April 4, 1978. Majority: Hinnegan, Halpin — seven pages; dissent: Churchill-Smith — four pages; addendum: Halpin — one page. (5)

Board of Arbitration

Arbitrability: grievance filed by union not containing specific claim for remedy; company alleging enlargement of grievance to include remedy at arbitration stage contrary to collective agreement; grievance arbitrable. *Re Air Canada and Canadian Airline Employees Association; union grievance*, April 28, 1978. Interim award: Brown — nine pages. (6)

Parties: individual grievor failing to appear at arbitration hearing; counsel for company and union opposing request by grievor's counsel for adjournment; rights of the grievor as "affected party" considered; adjournment denied. *Re Air Canada and International Association of Machinists and Aerospace Workers; Deans grievance*, April 26, 1978. Kennedy — 22 pages. (7)*

Classification

Employer establishing new classification by combining two classifications; union objecting to employer's unilateral action; grievance dismissed. *Re Allied Chemical Canada, Limited and United Automobile Workers, Local 89; union grievance*, April 12, 1978. O'Shea — 14 pages. (8)

Improper creation of new job classification alleged: employer swearing in civilian employees as special constables; union alleging employer failing to post vacancies in making appointments to new classification; grievance allowed. *Re The Board of Commissioners of Police for the City of Sault Ste. Marie and The Sault Ste. Marie Police Association; union grievance*, April 17, 1978. Aggarwal — 31 pages. (9)

Rate of pay: union claiming new classification subject to incentive earning formula under collective agreement; whether particular job classification validly created to reflect different work performed; grievance dismissed. *Re Goodyear Canada Incorporated, New Toronto Factory and Central Distributing Warehouse and United Rubber, Cork, Linoleum and Plastic Workers of America, Local 232; group grievance*, April 2, 1978. Majority: Baum, Wakely — 16 pages; dissent: Collins. (10)

Upgrading of job classification sought: job rating by company challenged by grievor; whether grievor's superior skills required by job; grievance dismissed. *Re Otis Elevator Company Limited and United Steelworkers of America, Local 7062; Paxton grievance*, March 1, 1978. Majority: Egan, Walker — 14 pages; dissent: Yule. (11)

Wages: grievor alleging company requiring him to operate machinery not within his classification; grievor seeking payment at higher rate for work performed in other classification; grievance dismissed. *Re Webster Air Equipment Limited and International Molders' and Allied Workers' Union; Corsault grievance*, February 13, 1978. Majority: Gorsky, Adamson — five pages; dissent: Wohl — two pages. (12)

Collective Agreement

Discharge: employer and grievor previously having entered agreement of conditional reinstatement purporting to eliminate recourse to grievance procedure and arbitration in event of subsequent discharge; grievance arbitrable. *Re TRW Canada Limited, Thompson Products Division and Thompson Products Employees Association; Browning grievance*, April 10, 1978. Majority: Rubenstein, Tate — 20 pages; dissent: Rogers — 11 pages. (13)*

Interest arbitration: union seeking redress of alleged sex discrimination in wage rates; company wage offer implemented. *Re The British American Bank Note Company Limited and The Ottawa Steel Plate Feeders and Examiners Union, Local 31*; April 13, 1978. Shime — 27 pages. (14)

Discharge

Absence from work: grievor failing to report to company estimated date of return after three days of absence; whether work-related stress causing the absence constituting extenuating circumstance excusing failure to report return date; reinstatement with compensation. *Re Philips Electronics Limited and International Brotherhood of Electrical Workers, Local 1590; Dozsa grievance*, April 5, 1978. Majority: O'Shea, Cox — 12 pages; dissent: Freedman — four pages. (15)

Absence from work: grievor notifying company of reason for absence but not knowing expected date of return; reinstatement with compensation. *Re Modular Architectural Components Limited and Sheet Metal Workers' International Association, Local 291; Turk grievance*, April 17, 1978. Weatherill, Flood, Sergeant — eight pages. (16)

Absence from work and intoxication on the job alleged: grievor suspected of being intoxicated on the job; grievor absent from work and supplying company with false excuse; grievance dismissed. *Re Air Canada and International Association of Machinists and Aerospace Workers* — see (7), *supra*. (17)*

Absence without leave — grievor refusing to work assigned overtime shift to cover for absent employee; collective agreement making overtime work mandatory in such circumstances, grievance dismissed. *Re St. Lawrence Starch Company Limited and Retail, Wholesale and Department Store Union, Local 440; Posados grievance*, March 17, 1978. Majority: Brunner, Furlong — 17 pages; dissent: Spaxman — two pages. (18)

Absenteeism — grievor's ill health causing frequent absences from work; evidence not establishing likelihood of continued inability to attend at work; reinstatement without compensation. *Re Noranda Mines Limited and The Canadian Union of Base Metal Workers; MacDonald grievance*, April 25, 1978. Gorsky — eight pages. (19)

Assault: grievor alleged to have assaulted fellow employee; suspension substituted. *Re Massey-Ferguson Industries Limited and United Automobile Workers; Rowe grievance*, April 7, 1978. McCulloch — 19 pages; appendix: 14 pages. (20)

Conflict of interest alleged by employer: grievor's outside relationships and professional activities claimed to create a conflict of interest; extent of previous specific warning to grievor of alleged conflict considered; suspension substituted. *Re Hamilton-Wentworth, The Regional Municipality of and Canadian Union of Public Employees, Local 167; Sakala grievance*, March 31, 1978. Kennedy — 25 pages. (21)*

Culminating incident — absenteeism: grievor leaving work before completion of shift claiming fatigue; grievor late for work on subsequent occasion; grievances dismissed. *Re Canadian Cannery Limited and The International Association of Machinists and Aerospace Workers, Local 863; Mathieson grievance*, April 25, 1978. Majority: Kennedy, Harris — 11 pages; dissent: Tate — four pages; addendum: Kennedy — one page; addendum to dissent: Tate — two pages. (22)

Culminating incident — failing to perform duties assigned: grievor unable to be found during shift, with assigned work undone; grievance dismissed. *Re The Parking Authority of Toronto and Canadian Union of Public Employees, Local 43; Weekes grievance*, April 14, 1978. Majority: Kruger, Filion — six pages; dissent: Tate — five pages. (23)

Culminating incident: grievor indulging in practical jokes, not responding to supervision, unsatisfactory work behavior; grievance dismissed. *Re International Nickel Company Limited and United Steelworkers of America; Orlak grievance*, March 30, 1978. Majority: Rayner — nine pages; dissents: Carriere — three pages; Gilmore — three pages. (24)*

Culminating incident: insubordination and failing to perform work satisfactorily; grievor enrolled in rehabilitation programme to deal with personal problems; suspension substituted. *Re Canadian Vinyl Fabrics Stauffer Chemical Company of Canada Limited, New Toronto Works and United Steelworkers of America, Local 13286; Whitehouse grievance*, April 25, 1978. Majority: Brown, Christie — 14 pages; dissent: Cook — one page. (25)

Culminating incident: lateness and absenteeism; grievor's lateness in last incident not justifying discipline; reinstatement with compensation. *Re TRW Canada Limited, Thompson Products Division and Thompson Products Employees Association* — see (13), *supra*. (26)*

Damaging company property: grievor breaking and entering a cabinet at work place to obtain special soap not authorized for his use; reinstatement without compensation. *Re International Harvester Company of Canada Limited and United Automobile Workers, Local 127; Moccia grievance*, April 18, 1978. O'Connor — five pages. (27)

Disorderly conduct, arguing with fellow employee — grievor subject to provocation in the form of insulting remarks; suspension substituted. *Re Abitibi Paper Company Limited, Abitibi Containers Div. and The Canadian Paper Workers Union, Local 1497; Smith grievance*, April 3, 1978. Majority: O'Shea, Weisbach — 16 pages; dissent: Shields — one page. (28)

Failing to follow proper cash procedures: grievor failing to register several cash transactions according to company policy; suspension substituted. *Re Dominion Stores Limited and Retail, Wholesale and Department Store Union, Local 582; Williams grievance*, March 17, 1978. Majority: Egan, LaChance — nine pages; dissent: White. (29)

Medical fitness to perform work: conflicting medical evidence concerning grievor's likely future ability to perform work; company influenced by medical opinion prejudiced by concern for insurance company; reinstatement with compensation. *Re Levesque Plywood Company and The Lumber and Sawmill Workers Union, Local 2995; Morneau grievance*, March 21, 1978. Majority: Beck, Wren — 20 pages; dissent: Wakely — six pages. (30)

Non-punitive discharge — absence from work due to medical problems; grievor's high rate of absenteeism continuing following previous conditional reinstatement by agreement of the parties; grievance dismissed. *Re Massey-Ferguson Industries Limited and United Automobile Workers; Shubley grievance*, April 11, 1978. Shime — 11 pages. (31)

Possession of stolen company property — grievor attempting to resign from employment and withdraw grievance from arbitration; company not accepting resignation as grievor had already been discharged; whether company bound by agreement to accept resignation; hearing adjourned. *Re Air Canada and The International Association of Machinists and Aerospace Workers, Local 148; Wagner grievance*, April 26, 1978. Weatherill — nine pages. (32)*

Refusing to obey instructions; attempting to destroy company property: grievor putting laundry in garbage and refusing to obey instruction to remove it from garbage; reinstatement without compensation. *Re Sheraton Limited (King Edward Hotel) Limited and The Hotel and Club Employees Union, Local 299; McBean grievance*, April 6, 1978. Majority: Andrews, Tate — nine pages; dissent: Healy — two pages; addendum: Tate — one page. (33)

Refusing to perform work: grievor having volunteered to work night shift on assurance from supervisor that a 2-man crew would be working; incentive earnings available on shift decreased by subsequent change to 4-man crew; grievance dismissed. *Re Livingston Industries Limited and The International Woodworkers of America; Luce grievance*, April 13, 1978. Majority: O'Shea, Piroth — 17 pages; dissent: Smiley. (34)

Refusing to perform work assigned, causing illegal strike: grievor's disagreement about work assignment leading to two work stoppages by other employees; grievor performing union steward function in questioning assignment procedures; grievance dismissed. *Re Cannet Freight Cartage Limited and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 419; Richards grievance*, April 21, 1978. Majority: Dunn, Whittaker — 11 pages; dissent: Beaulieu — three pages; addendum: Dunn — two pages. (35)*

Refusing to submit to examination by company-appointed doctor while absent due to compensable injury; whether company may require injured employee to submit to such examination contrary to statutory provision; grievance allowed. *Re Welland Forge Limited and United Electrical, Radio and Machine Workers of America, Local 523; Dignard grievance*, April 10, 1978. Majority: O'Connor, Russell — ten pages; dissent: McKillop. (36)

Theft of company property: grievor convicted of possession of stolen property in criminal court; grievor failing to provide reasonable explanation as to the circumstances; grievance dismissed. *Re Rockwell International of Canada Limited, Gananoque Plastics Div. and United Steelworkers of America; Witherspoon grievance*, March 16, 1978. O'Connor — seven pages. (37)

Discipline

Absence from work — grievor sentenced for jail term for driving offence: company not given prior notice of possible committal and refusing to co-operate in Temporary Absence Program; grievance dismissed. *Re Lake Ontario Steel Company Limited and United Steelworkers of America, Local 6571; Deveaux grievance*, March 30, 1978. Majority: Hinnegan, McKillop — six pages; dissent: Taylor. (38)

Absence from work station without permission: grievors attending at supervisor's office to discuss shop business; grievors alleging permission to attend had been given; grievances dismissed. *Re Worthington (Canada) Limited and International Association of Machinists and Aerospace Workers, Local 1673; Houston, Wilson grievances*, April 21, 1978. Majority: Brent, Doody — 15 pages; dissent: Chertkoff — two pages. (39)

Absence from work without permission: grievor failing to give required prior notice of absence; grievor making substantial compliance with notice requirements and providing reasonable explanation for technical breach; grievance allowed. *Re Borough of Etobicoke, Etobicoke Fire Department and International Firefighters' Association, Local 1137; Filyer grievance*, March 30, 1978. Kates — ten pages. (40)

Improper patient care: grievor allowing patient to ride unattended by medical personnel in back of ambulance; whether grievor responsible as driver to ensure fellow attendant properly performing his duties; grievance allowed in part. *Re Toronto, Municipality of Metropolitan and Canadian Union of Public Employees, Local 43; Hughes grievance*, undated. Majority: Brunner, Tate — 18 pages; dissent: Murray — two pages. (41)*

Inciting unlawful work stoppage: company alleging leadership role by grievors in work stoppage; grievors not participating in actual walk-out; grievances allowed. *Re Ford Motor Company of Canada Limited and United Automobile Workers, Local 707; Froats and Weston grievances*, March 21, 1978. Palmer — nine pages. (42)

Insubordination and threatening an illegal strike: grievor union president arguing with management personnel; company behavior constituting provocation and harassment; grievance allowed in part. *Re The Flintkote Company of Canada Limited, Nelson Crushed Stone Div. of King Paving and Materials Div. and United Cement, Lime and Gypsum Workers International Union, Local 494; Giddings grievance*, April 10, 1978. Rubenstein, Cosburn, Nokes — 16 pages; addendum: Cosburn — one page. (43)

Lateness, insubordination: grievor refusing to meet with supervisor without union steward's presence; grievor frequently late for work; grievance allowed in part. *Re Brink's Canada Limited and International Teamsters, Chauffeurs and Warehousemen, Local 419; Ostram grievance*, March 22, 1978. Majority: McCulloch, Beaulieu — 19 pages; dissent: Coley — two pages. (44)

Neglect — creation of unsafe working condition: grievor being injured by dead tree falling which it was his responsibility to remove; company considering past record beyond one-year limit; grievance allowed in part. *Re Spruce Falls Power and Paper Company Limited and Lumber and Sawmill Workers Union, Local 2995; Gaudreau grievance*, March 10, 1978. Majority: Barton, Gray — eight pages; partial dissent: Wren — one page. (45)

Neglect of duties, intoxication on the job alleged: grievor denying neglect and intoxication; grievor creating unsafe condition on furnace; grievance allowed in part. *Re The International Nickel Company of Canada and United Steelworkers of America; Legiec grievance*, January 30, 1978. Majority: Palmer, Abbot — 15 pages; dissent: Carriere. (46)

Participating in unlawful strike: grievor staying off work with others following national ratification of collective agreement, grievance dismissed. *Re Canada Packers Limited and Canadian Food and Allied Workers, Local P114; anonymous grievance*, April 14, 1978. Majority: Hinnegan, Williamson — six pages; dissent: Weisbach. (47)

Refusing to perform job assigned: grievor refusing to operate machine without proper instruction in its operation; grievance allowed in part. *Re Russel Brothers Limited and United Steelworkers of America; Cotter grievance*, April 3, 1978. Majority: O'Shea, Maguire — 12 pages; dissent: Winkler — three pages. (48)

Refusing to work assigned overtime: grievor not providing reasons at time of refusal to work overtime; grievor subsequently providing medical certificate affirming inability to work beyond regular hours, but not stating reasons for inability; inability subsequently revealed as due to pregnancy; grievance dismissed. *Re The Cooper Tool Group Limited and United Steelworkers of America; Croft grievance*, March 31, 1978. Majority: Brown, Morley — 12 pages; dissent: Barko — two pages. (49)

Residency requirement: grievor's house being destroyed by fire; grievor living outside of town pending re-building of house; whether grievor a "permanent resident" in town; grievance dismissed. *Re Fort Frances, The Town of and Canadian Union of Public Employees, Local 65; Rogers grievance*, February 7, 1978. Majority: Eoll, Lloyd — nine pages; dissent: Blasky — two pages. (50)

Wages: company docking grievors' pay one half hour; company alleging grievors took an extended coffee break; whether company has right to withhold pay for time not worked without prior notice to employees; grievance allowed. *Re Libby, McNeill and Libby of Canada, Limited and United Automobile Workers, Local 127; group grievance*, April 11, 1978. McLaren — 11 pages. (51)

Employee Benefits

Employer subsidy of safety shoe purchase: union claiming employer obligation to subsidize purchase also of safety boots; union seeking subsidy for purchase of first pair of shoes, not just for subsequent replacement; grievance allowed in part. *Re Council of Printing Industries of Canada, Photo Engravers and Electrotypers Limited and Toronto Printing Pressmen and Assistants' Union, Local 10; union grievance*, April 7, 1978. Majority: Hinnegan, Dinsdale — 11 pages; partial dissent: Weisbach — two pages. (52)

Grievance Procedure

Company grievance: company proceeding directly to arbitration without going through grievance procedure in collective agreement; agreement not containing provision for company grievances; grievance arbitrable. *Re ESB Canada Limited and United Electrical, Radio and Machine Workers of America, Local 514; company grievance*, April 22, 1978. Majority: Dunn, Drmaj — ten pages; dissent: Longridge — six pages. (53)

Retroactive effect of seniority accumulation clause: employees on leaves of absence prior to signing of collective agreement not credited for time on leave as required under terms of subsequent agreement; objections to seniority list subject to mandatory time limits; grievance not arbitrable. *Re Mohawk College of Applied Arts and Technology and Ontario Public Service Employees Union; group grievance*, March 31, 1978. Majority: Brown, Wright — 14 pages; dissent: Switzman — three pages. (54)

Timeliness: company claiming non-compliance with time limits in collective agreement; whether delay by union unreasonable and prejudicial to company; grievance arbitrable. *Re Ind-Ex Distributors Limited and Milk and Bread Drivers, Dairy Employees, Caterers and Allied Employees Union, Local 647; Skinner grievance*, April 6, 1978. Preliminary award: Brown — 18 pages. (55)

Timeliness: union failing to submit grievance to arbitration within time limits imposed by collective agreement; union failing to make proper request for arbitration; grievance dismissed. *Re Victory Soya Mills and International Chemical Workers' Union, Local 247; Able grievance*, April 14, 1978. Majority: Weatherill, White — 12 pages; dissent: Wilson. (56)

Holiday Pay

Entitlement during lay-off: employees on lay-off not working qualifying days preceeding and following holiday; whether qualifying days clause effective only where employee is voluntarily absent; grievance allowed. *Re Galco Food Products Limited and Allied Food Workers; policy grievance*, April 5, 1978. Majority: Beck, Switzman — five pages; dissent: Tarasuk — three pages. (57)*

Hours of Work

Hours of shift changed: company unilaterally altering regular hours of work; agreement requiring mutual consent to modifications of shift times; grievance allowed. *Re Barber-Ellis of Canada Limited and United Automobile Workers, Local 397; union grievance*, March 27, 1978. Palmer — five pages. (58)

Job Posting

Company appointing new employee to job posted in preference to grievor; grievor claiming discrimination based on sex and past union activity; whether grievor afforded a fair opportunity to display ability during familiarization period; grievance dismissed. *Re Crown Electrical Manufacturing Limited and United Automobile Workers, Local 397; Armstrong grievance*, April 4, 1978. Brown — nine pages. (59)

Improper denial of job alleged: company adding five qualifications to job posted; whether minimum experience requirement violating proper assessment procedures; grievance allowed. *Re Liquid Carbonic Canada Limited and United Steelworkers of America, Local 12998; Arseneault grievance*, April 11, 1978. Majority: McLaren — 16 pages; partial dissent: Black — two pages; dissent: Robinson. (60)

Qualifications: employer appointing junior employee to posted job; employer failing to make fair assessment of grievor's ability to perform job; grievance allowed. *Re Thunder Bay, The Corporation of the City of and Canadian Union of Public Employees, Local 87; Christiansen grievance*, April 10, 1978. Aggarwal, O'Donnell, Simpson — 21 pages. (61)

Qualifications: employer awarding job to junior employee; whether grievor's ability to perform job approximately equal to that of successful applicant; grievance dismissed. *Re Sudbury, The Corporation of the City of and Canadian Union of Public Employees, Local 207; Thibault grievance*, April 19, 1978. Majority: Brown, Hurley — 13 pages; dissent: McVey. (62)

Qualifications — grievor denied appointment, employer awarding job to junior employee; grievor refusing to submit to practical examinations to assess his competence; grievance dismissed. *Re North York, The Corporation of the Borough of and The North York Foremen's Association, Local 711; Biggam grievance*, April 19, 1978. Majority: Schiff, McDermott — six pages; dissent: Tate — seven pages. (63)

Qualifications: posted job awarded to junior employee; grievor claiming relatively equal ability and skill to incumbent; grievance dismissed. *Re Northern Telecom and United Automobile Workers, Local 1839; Badgley grievance*, April 26, 1978. Baum — 14 pages. (64)

Lay-Off

Grievor refusing to re-imburse employer for insurance premium increases attributable to grievor's driving record; employer laying-off grievor until non-driving job found for him; grievance dismissed. *Re Comrie Lumber Company Limited and Ready Mix, Building Supply, Hydro and Construction Drivers, Warehousemen and Helpers, Teamsters, Local 230; Milley grievance*, April 18, 1978. Majority: Perkins, Riggs — five pages; dissent: Ireton. (65)

Improper lay-off alleged — grievor denied opportunity to bump junior employee in parallel, but different job; whether grievor possessing necessary skills to perform in different job classification; grievance dismissed. *Re The Peterborough County Board of Education and Canadian Union of Public Employees, Local 1680; Hutton grievance*, April 24, 1978. Majority: O'Shea, Grant — 16 pages; dissent: Whitney — one page. (66)

Improper lay-off alleged — seniority: lay-off required because of start-up problems with new machinery; wider bumping rights applicable where lay-off planned or lasting more than two days; grievance dismissed. *Re Webster Manufacturing (London) Limited and International Molders' and Allied Workers' Union, Local 49; Cormier grievance*, undated. Majority: Palmer, Adamson — six pages; dissent: Wohl. (67)

Work assignment: grievor laid-off while junior employees in higher classification retained; grievor claiming junior employees performing work of his classification; grievance dismissed. *Re DeLaval Turbine Canada Limited and International Association of Bridge, Structural and Ornamental Iron Workers, Local 834; Jocko grievance*, April 20, 1978. Haladner — ten pages. (68)

Overtime

Denial of overtime opportunity alleged: company claiming offer of overtime made to grievor; company offering settlement during grievance procedure by making overtime available to grievor in the future; grievance allowed. *Re Fiberglass Canada Limited and Amalgamated Clothing and Textile Workers Union, Local 1305; Leader grievance*, April 6, 1978. Burkett — 17 pages. (69)

Overtime Pay

Entitlement: union claiming overtime pay for last 8 hours of 40 hour week in which one day was a worked holiday; employer paying premium rate for work on holiday plus holiday pay; grievance dismissed. *Re Morrison-LaMothe Foods Limited and Bakery and Confectionery Workers' International Union of America, Local 322; policy grievance*, April 20, 1978. Majority: Kennedy, Scott — seven pages; dissent: Dawson. (70)

Progression

Classification: grievor claiming improper denial of re-classification on completion of up-grading course and training; whether company decision unreasonable; grievance allowed. *Re The Hunter Rose Company and Graphic Arts International Union, Local 28B; Hebert grievance*, April 7, 1978. Majority: Brent, Rusk — 18 pages; dissent: Smith — one page. (71)

Promotion

Implementation of previous award: employer failing to implement previous award ordering promotion of grievor with compensation; employer returning all employees concerned to original assignments; implementation ordered. *Re Dominion Stores Limited and Retail, Wholesale and Department Store Union, Local 414; LaPierre grievance*, April 20, 1978. Supplementary award: O'Shea, White, Dahmer — six pages. (72)

Reporting Pay

Entitlement: grievor being laid-off after beginning shift; grievor claiming four hours pay; grievance allowed. *Re Comrie Lumber Company Limited and Ready Mix, Building Supply, Hydro and Construction Drivers, Warehousemen and Helpers, Teamsters, Local 230; Milley grievance* — see (65), *supra*. (73)

Resignation

Intention: grievor indicating resignation if her request for extension of leave of absence refused; whether intention to resign present and continuing; reinstatement ordered. *Re Air Canada and Canadian Air Line Employees Association; Kessler grievance*, March 31, 1978. Rayner — nine pages. (74)

Withdrawal — grievor purporting to withdraw offer of resignation before its acceptance by employer; grievor alleging undue pressure from senior officers to submit resignation; reinstatement with compensation. *Re Board of Commissioners of Police of Metropolitan Toronto and The Metropolitan Toronto Police Association* — see (1), *supra*. (75)*

Seniority

Calculation of starting date for wage increment purposes: employer adjusting starting date to reflect subsequent maternity leave and part-time work of grievor; grievance allowed. *Re The York Regional Board of Health and Ontario Nurses' Association; Andrachuk grievance*, March 22, 1977. Majority: Ord, Walsh — seven pages; did not concur: Noble. (76)

Sick Leave

Calculation of sick leave gratuity on retirement: grievor claiming previous employment to be considered in calculation of years of service; grievance allowed. *Re Hamilton, The Corporation of the City of and Canadian Union of Public Employees, Local 1041; Dahmer grievance*, September 15, 1976. Abbott — 22 pages. (77)

Strike

Liability of union for unlawful strike; company claiming union liability for losses resulting from October 14, 1976 work stoppage; union encouraging employee participation in "Day of Protest"; grievance allowed. *Re ESB Canada Limited and United Electrical, Radio and Machine Workers of America* — see (53), *supra*. (78)

Strikes

Picket line: employees refusing to cross picket line of fellow employees in different bargaining unit on legal strike; employer refusing to continue fringe benefit contributions and to pay holiday pay during that period; grievances allowed. *Re The Hydro-Electric Commission of the City of Sudbury and Canadian Union of Public Employees, Local 138; union grievance*, November 22, 1977. Majority: Palmer, Dungey — ten pages; dissent: Clark. (79)

Technological Change

Bumping rights: grievor denied bumping rights following transfer required by automation; company maintaining bumping rights effective only in lay-off situation; grievance allowed. *Re Domtar Packaging Limited and Canadian Paperworkers Union, Local 1470; Williams grievance*, April 21, 1978. Majority: Curtis, Quaife — seven pages; did not concur: Byers. (80)

Union Recognition

Jurisdictional dispute: union alleging company improperly giving jurisdiction over new employees to a different union; disputed work materially connected to work within jurisdiction of other union; grievance dismissed. *Re Wabco-Standard Limited, American Standard Division and United Steelworkers of America, Local 3589, and International Brotherhood of Pottery and Allied Workers, Local 231 (Intervener); union grievance*, March 28, 1978. Majority: McLaren, Healy — 20 pages; dissent: Martin — five pages. (81)

Union Rights

Deduction of dues by employer: local union being placed under trusteeship and employees requesting that employer discontinue deductions; union claiming employer contractually obligated to deduct and remit dues; grievance allowed. *Re Hartz Mountain Pet Supplies Limited and International Chemical Workers Union* — see Vol. 8, #3 (62), *supra*. (82)

Discrimination on basis of union membership: wages denied only to union members after heavy snowstorm caused wide absenteeism throughout the staff; grievance allowed. *Re Inglis Limited and United Steelworkers of America; union grievance*, February 24, 1978. Beck — nine pages. (83)*

Union Security

Company declining union request to suspend grievor for one week without pay after finding of guilt at a union disciplinary hearing; whether violation of union security clause in collective agreement; whether company required to increase discipline imposed at request of union; grievance dismissed. *Re Dominion Stores Limited and Retail, Wholesale and Department Store Union, Local 414; union grievance*, March 14, 1978. Majority: Hinnegan, White — six pages; dissent: Wynter — five pages. (84)

Vacations

Grievor claiming that she was not permitted to take her vacation at a time that was "mutually agreeable"; whether employer violated the collective agreement by acting unreasonably; grievance dismissed. *Re United Automobile Workers, Local 1451 and Office and Professional Employees International Union, Local 343; unnamed grievance*, March 7, 1978. Shime — seven pages. (85)*

Wages

Entitlement: employer not paying employees for days not worked as a result of snowstorm; agreement providing for no loss of pay for up to 6 days per year not worked "for personal and legitimate reasons"; grievance dismissed. *Re Canadian Fram Limited and United Automobile Workers, Local 35; group grievance*, April 3, 1978. Palmer — 12 pages. (86)

Procedural requirements in refusing increment to grievor: employer failing to give proper notice of refusal and to supply mandatory statement of specific improvements; grievance allowed. *Re Moose Factory Island Public School Board and Federation of Women Teachers Association of Ontario; Dick grievance*, June 28, 1977. Duchesneau-McLaughlin, Jones, Kelly — four pages. (87)

Welfare Plans

Company being obligated to pay the "entire cost" of a plan covering employees disabled because of sickness or non-compensable accidents; whether company obligated to pay doctor's fee for filling out forms required for the plan; grievance allowed. *Re Reed Limited, Dryden Division and Canadian Paperworkers Union, Local 105; union grievance*, February 28, 1978. Aggarwal, Costigan, Kostyre — 21 pages. (88)

Work Assignment

Memorandum of agreement signed between the company and the grievors to protect wage rates on moving to a new plant; whether also giving rights to specific types of work; grievance dismissed. *Re Continental Group of Canada Limited and Canadian Paperworkers Union, Local 1112; Mortson and Pickford grievances*, March 3, 1978. O'Shea, Quaife, Binning — 13 pages. (89)

Refusal of dispatch: employer ordering grievor to report for work or face suspension; grievor relying on past practice of being able to refuse work without penalty; grievance allowed. *Re Overland Western Limited and Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 938; Barnett grievance*, February 28, 1978. Majority: Brown, Goudge — 18 pages; dissent: Singleton — three pages. (90)

Union alleging restocking of shelves by suppliers' representatives constituted continuous rather than single violation of collective agreement; grievance dismissed. *Re Dominion Stores Limited and Retail, Wholesale and Department Store Union, Local 414; Kelman grievance*, March 2, 1978. Kennedy, Spaxman, White — seven pages. (91)

Change in operational procedures: union alleging changes transgressing jurisdiction of bargaining unit; information necessary to performance of work received by computer rather than directly from source; grievance dismissed. *Re Air Canada and Canadian Air Line Dispatchers Association; group grievance*, March 31, 1978. Majority: Brown, Morley — 43 pages; dissent: Hayes — 11 pages. (92)

Employer assigning work of one classification to employees in another classification; job descriptions necessarily restricting proper work assignment; grievance allowed. *Re Spar Aerospace Products Limited and United Automobile Workers, Local 673; group grievance*, April 19, 1978. Brown — ten pages. (93)

The following awards in interest arbitrations under *The Hospital Labour Disputes Arbitration Act* were also filed with the Commission during the month of March, 1978:

Blue Water Rest Home and Service Employees Union, Local 210, Brown Coburn — nine pages; minority opinion: Farrar — three pages.

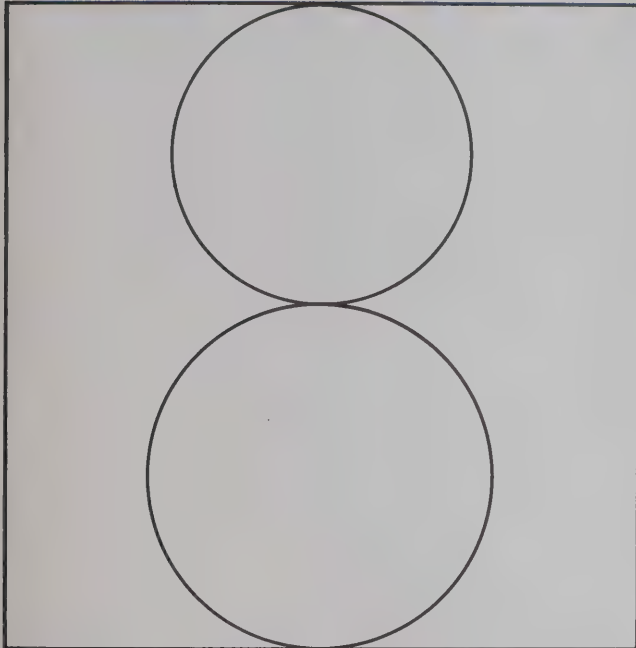
The awards may be seen at the office of the Commission, 400 University Avenue, 14th floor, Toronto. Copies of awards may be obtained for a fee of 50 cents per page. Orders will be filled on receipt of an application and a cheque or money order payable to the Treasurer of Ontario for the applicable amount, which should be forwarded to: Cashier's Office, Ministry of Labour, 400 University Avenue, Toronto, Ontario M7A 1V6.

Filing Awards

The attention of chairmen of boards of arbitration and sole arbitrators is drawn to the provision of Section 6(2) of the Regulation, which reads: 6.—(2) Every arbitrator shall, within ten days of issuing an award, file a copy thereof with the Commission. This provision would apply to all arbitrators approved under The Ontario Labour-Management Arbitration Commission Act and regardless of whether they were appointed as chairmen or sole arbitrators pursuant to the Act, by the parties or by the Minister.

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Monthly Bulletin



The Ontario Labour-Management
Arbitration Commission

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T.E. Armstrong, QC, Deputy Minister

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Awards

The following awards were filed with the Commission during the month of May, 1978, under Section 6(2) of Ontario Regulation 635, R.R.O. 1970.

The summary was prepared at the Faculty of Law, Queen's University, under the supervision of C.G. Simmons, B.A., B.C.L., LL.M., and K.P. Swan, B. Eng., LL.M.

*Indicates award to be reported in full or in part in *Labour Arbitration Cases*.

Arbitrability

Layoff: letter of agreement re severance pay not a part of current collective agreement; grievance dismissed.

Re I.T.E. Industries Limited and International Brotherhood of Electrical Workers, Local 1590; Naray grievance, March 10, 1978. Roberts, Payette, Cox — four pages. (1)

Bargaining Unit

Composition — newly created positions allegedly involving employment in a confidential capacity in matters relating to labour relations; grievance allowed. *Re Philco Ford of Canada Limited and United Automobile Workers, Local 1980; union grievance*, May 8, 1978. O'Shea — ten pages. (2)

Work normally performed by bargaining unit members improperly done by supervisory employee; grievance allowed. *Re The Township of Jaffray and Melick, Corporation of and Canadian Union of Public Employees, Local 191; union policy grievance*, April 25, 1978. Majority: Bicknell, Simpson — nine pages; dissent: MacDonell. (3)

Board of Arbitration

Implementation of award: employer failing to implement award; whether Board can order employer to appoint grievor to disputed position when employer fails to implement direction to reconsider promotion decision; further order made. *Re The City of Thunder Bay, The Corporation of and Canadian Union of Public Employees, Local 87; Christiansen grievance*, May 25, 1978. Supplementary award: Aggarwal, O'Donnell, Simpson — four pages. (4)

Collective Agreement

Incorporation by reference of qualifications — whether assessment program; program modified by policy statements of assessment agency; effect on collective agreement; grievance allowed. *Re The Renfrew County Board of Education and The Renfrew County Elementary School Teachers; McKee grievance*, December 6, 1977. Majority: Scott, Pinkerton — five pages; dissent: Huckabone. (5)

Cost of Living Allowance

Entitlement: room and board provided in lieu of living allowance; whether special allowance payable to grievors during temporary absence from camp; grievances dismissed. *Re Ontario Hydro and Canadian Union of Public Employees, Ontario Hydro Employees' Union, Local 1000; Croft and Suhadolc grievance*, May 19, 1978. Majority: Brent, Hamilton — eight pages; dissent: Trower — four pages; addenda: Brent — seven pages; Trower — two pages. (6)

Damages

Unlawful strike — union liable for damages for illegal strike; whether company able to prove loss due to strike; grievance allowed in part. *Re Mansfield-Denman General Company Limited and United Rubber, Cork, Linoleum and Plastic Workers of America, Local 455; company grievance*, May 24, 1978. Majority: Hinnegan, Punnett — 15 pages; dissent: Scott — three pages; addendum: Hinnegan — one page. (7)*

Discharge

Absence without leave: company alleging that grievor failed to provide sufficient proof of illness; reinstatement with partial compensation. *Re Chrysler Canada Limited and United Automobile Workers, Local 1285; Leslie grievance*, May 15, 1978. O'Shea — 16 pages. (8)

Absence without leave — grievor claiming he failed to report for work because the foreman was having an affair with his wife; reinstatement with compensation. *Re Thomas J. Lipton, Limited, Bramalea, Ontario and American Federation of Grain Millers, Local 327; Mr. X. grievance*, May 15, 1978. Majority: Curtis, Kobryn — ten pages; partial dissent: Heather — one page. (9)

Absenteeism — company must show both excessive absenteeism in past and grievor incapable of regular attendance in future; conditional reinstatement without compensation substituted. *Re The Lofthouse Brass Manufacturing Limited and United Automobile Workers, Local 1090; Linton grievance*, May 6, 1978. Curtis — ten pages. (10)

Assault on fellow employee — whether grievor's actions intentional or instinctive response to perceived threat; reinstatement with compensation. *Re Canadian Broadcasting Corporation and The Newspaper Guild, Local 213; Flynn grievance*, May 24, 1978. Brandt — 24 pages. (11)

Culminating incident — abusive language amounting to insubordination in light of past record; grievance dismissed. *Re Kitchener, The Corporation of the City of and Canadian Brotherhood of Railway, Transport and General Workers, Local 304; Boye grievance*, April 28, 1978. Majority: Rayner, Sims — ten pages; dissent: Beckwith. (12)

Culminating incident — insubordination; abusive language used before other employees; grievance dismissed. *Re Rockwell International of Canada Limited and United Automobile Workers, Local 127; McGarrigle grievance*, May 1, 1978. Hinnegan — four pages. (13)

Culminating incident: unsatisfactory work performance; Michon — insufficient production; Goodchild — carelessness and causing damage to company property; suspensions substituted. *Re Whitefish Pallet Company Limited and Lumber and Sawmill Workers' Union, Brotherhood of Carpenters and Joiners of America, Local 2693; Michon and Goodchild grievances*, May 12, 1978. Majority: Brunner, Wren — 17 pages; partial dissent: Buckland — four pages. (14)

Deliberate damaging of company property due to exasperation and frustration of grievor; reinstatement with seniority but without compensation substituted. *Re General Motors of Canada Limited and United Automobile Workers; Marcham grievance*, April 25, 1978. Palmer — ten pages. (15)

Disability: company alleging grievor not physically fit to perform the required work; grievor formerly having done the same work as a part-time employee; reinstatement with compensation. *Re Dominion Stores Limited and Retail, Wholesale and Department Store Union, Local 414; Gallagher grievance*, May 5, 1978. Majority: O'Shea, Weisbach — 13 pages; dissent: White — two pages (16)

Disability — whether so severe that there is little or no likelihood of return to work; onus of proof and obligation to communicate; conditional reinstatement without compensation substituted. *Re International Nickel Company of Canada and United Steelworkers of America; Mizuik grievance*, April 12, 1978. Majority: Rayner, Size — ten pages; dissent: Abbott (17)

Grievor failing to report damage caused to truck by an accident; interpretation of accident to be taken in broadest sense; grievance dismissed. *Re Bondy Cartage Limited and Teamsters, Chauffeurs, Warehousemen and Helpers Union, Local 880; Kelly grievance*, May 9, 1978. Majority: McLaren, McCrindle — 14 pages; dissent: Kobryn — four pages. (18)

Insubordination: grievor persistently refusing to meet employer's production requirements; grievor threatening supervisor after termination; grievance dismissed. *Re The University of Windsor and Canadian Union of Public Employees, Local 1001; Herbrecht grievance*, May 29, 1978. O'Shea — ten pages. (19)

Misappropriating company funds — conscious deviation from established practices and procedures relating to safeguarding of company funds; reinstatement with compensation. *Re Bell Canada and Communications Workers of Canada; Kajak grievance*, May 10, 1978. Majority: Kates, Walsh — 21 pages; dissent: Healy — three pages. (20)

Possession of company in circumstances consistent with theft: grievor's explanation of his possession of item inadequate; grievance dismissed. *Re Dominion Stores Limited and Retail, Wholesale and Department Store Union, Local 414; Hayward grievance*, May 5, 1978. Majority: Egan, White — 11 pages; dissent: Spaxman — two pages. (21)

Procedural requirements — discharge notice required within three days of offence; notice delayed pending police investigation of narcotics possession; time limit not mandatory; preliminary objection dismissed. *Re Massey-Ferguson Industries Limited and United Automobile Workers, Local 458; Lachapelle grievance*, May 5, 1978. Schiff — 14 pages. (22)*

Strike — grievor actively encouraging participation in unlawful work stoppage although not instigating it; good record mitigating factor; reinstatement without compensation. *Re Raybestos-Manhattan (Canada) Limited and United Steelworkers of America; Oliver grievance*, May 9, 1978. McLaren — 20 pages. (23)

Theft of company property; property found in grievor's possession without reasonable explanation; grievance dismissed. *Re Canadian General Electric Company Limited and United Electrical, Radio and Machine Workers of America, Local 541; Kissil grievance*, January 20, 1978. Majority: Roberts, Healy — 15 pages; dissent: Bullock — three pages. (24)

Discipline

Absence without leave: grievor identified by security guard as being absent; identification unsatisfactory; grievance allowed. *Re TIW Industries Limited, Central Bridge Company Division and United Steelworkers of America, Local 3599; Stacey grievance*, May 17, 1978. O'Shea, Tousignant, Smith — ten pages. (25)

Absent without leave — grievor seen at hockey game after phoning in sick earlier in the day; grievance allowed. *Re London Transit Commission and Amalgamated Transit Union, Local 741; Sherme grievance*, May 12, 1978. Majority: Brandt, Austin — nine pages; did not concur: Castle. (26)

Absenteeism — continual absenteeism and lateness; grievance dismissed. *Re Thomas Built Buses of Canada Limited and United Automobile Workers, Local 636; Clarke grievance*, May 1, 1978. Majority: Kennedy, Sanderson — seven pages; dissent: Cooper — one page. (27)

Culminating incident — prior incident which had been settled amicably used to assess harsher discipline; grievance allowed in part. *Re Metro Toronto, The Municipality of and Canadian Union of Public Employees, Toronto Civic Employees Union, Local 43; Girvan grievance*, May 17, 1978. Majority: Brent, Tate — nine pages; dissent: Perron. (28)

Disciplinary penalty — grievors refusing to perform work assignment; whether wages may be withheld for time not worked; grievance allowed. *Re Libby, McNeill and Libby of Canada Limited and International Union, U.A.W., Local 127; Mugridge and Rup grievances*, May 17, 1978. R.J. Roberts — five pages. (29)

Disobeying company rules: grievor smoking in clearly designated no-smoking area; grievance dismissed. *Re Libby, McNeill and Libby of Canada Limited and United Automobile Workers, Local 127; Rup grievance*, May 30, 1978. Kennedy — seven pages. (30)

Falsification of employment records — grievors punching out for other employees; grievances dismissed. *Re Dominion Stores Limited and Retail, Wholesale and Department Store Union, Local 414; Bates and Tedesco grievances*, April 26, 1978. Majority: Egan, White — five pages; dissent: Spaxman — two pages. (31)

Grievor involved in physical altercation with another employee; other employee instigating disturbance; grievance allowed in part. *Re Toronto Star and Toronto Newspaper Guild; McKeegan grievance*, April 28, 1978. Majority: Teplitsky, Tate — six pages; dissent: McGuire — one page. (32)

Innocent failure to record sales: accusation against grievor without presence of union steward; grievance allowed in part. *Re Dominion Stores Limited and Retail, Wholesale and Department Store Union, Local 414; Fortino grievance*, April 12, 1978. Majority: Rayner, Dahmer — ten pages; dissent: Sargeant — two pages. (33)

Insubordination — failure to obey orders: employee believing order to be unreasonable; grievance dismissed. *Re Raybestos-Manhattan (Canada) Limited and United Steelworkers of America; Gardner grievance*, May 9, 1978. McLaren — nine pages. (34)

Insubordination: grievor improperly dressed while in uniform; grievor threatening his supervisor and alleging harassment; grievance dismissed. *Re The Governing Council of the University of Toronto and The International Union United Plant Guard Workers of America, Local 1962; Smith grievance*, May 12, 1978. Hinnegan — 11 pages. (35)

Insubordination: refusal to follow orders and use of foul language; grievance dismissed. *Re Coca-Cola Limited and Canadian Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers; Stennett grievance*, April 28, 1978. Curtis — seven pages. (36)

Negligence: grievor's work falling below an acceptable standard of safety; past record of similar performance; grievance dismissed. *Re Toronto Iron Works Company and United Steelworkers of America, Local 2820; Galanakis grievance*, April 25, 1978. Majority: Gorsky, Smith — 11 pages; dissent: Shane. (37)

Negligence: handling and control of company funds leading to theft by unknown person; grievance dismissed. *Re Dominion Stores Limited and Retail, Wholesale and Department Store Union, Local 414; Gillard grievance*, April 25, 1978. Majority: Egan, White — five pages; dissent: Weisbach — one page. (38)

Refusal to work — grievor refusing to accept a run offered by trucking dispatcher; circumstances requiring all drivers to take runs; grievance dismissed. *Re M. Loeb Limited and Retail, Wholesale and Department Store Union, Local 579; MacDonald grievance*, May 9, 1978. Majority: Brown, Forbes — 17 pages; dissent: LaChance — one page. (39)

Safety — grievor causing a potentially dangerous chemical reaction by not following instructions; grievance allowed in part. *Re Dearborn Chemical Company Limited and Canadian Chemical Workers Union; unnamed grievance*, May 17, 1978. Shime, Gray, More — five pages. (40)

Sleeping on the job: grievor having arranged with foreman to be awakened after lunch break; grievance allowed in part. *Re Metropolitan Toronto, The Municipality of and Canadian Union of Public Employees, Toronto Civic Employees Union, Local 43; Kennedy grievance*, undated. Brunner, Riggs, Tate — 12 pages. (41)

Sleeping on the job: unintentional conduct and good record; grievance allowed in part. *Re Budd Automotive Company of Canada and United Automobile Workers, Local 1451; Ilnicki grievance*, April 6, 1978. Palmer — ten pages. (42)

Grievance Procedure

Policy grievance: whether remuneration policy grievance properly a class grievance; only a minority of employees affected; grievance not arbitrable. *Re Kirkland Lake Board of Education and Kirkland Lake Division of Ontario Secondary School Teachers' Federation; Breault grievance*, preliminary objections, May 4, 1978. Majority: Duchesneau-McLachlan, Gordon — ten pages; addendum: Gordon — three pages; dissent: Bain — two pages. (43)

Timeliness: section 37(5a) of *The Ontario Labour Relations Act* excluded by collective agreement; grievance not arbitrable. *Re O & K Orenstein & Koppel Canada Limited and International Association of Machinists and Aerospace Workers, Local 1740; Khanna grievance*, April 27, 1978. Majority: Bigelow, McKillop — five pages; dissent: Tate — three pages. (44)

Holiday Pay

Entitlement — qualifying days; whether employees on lay-off have worked on last scheduled work day; grievance dismissed. *Re Motor Wheel Corporation of Canada Limited and United Automobile Workers, Local 127; policy grievance*, May 18, 1978. Hinnegan — 11 pages. (45)

Holidays

Entitlement: holiday falling during vacation; union claiming employees get additional day as well as day in lieu; grievance dismissed. *Re Fanshawe College of Applied Arts and Technology and Ontario Public Service Employees Union; policy grievance*, May 24, 1978. Brandt, Trower, Henley — 16 pages. (46)

Scheduling: whether employer can revoke designation of optional holiday; grievance dismissed. *Re Fanshawe College of Applied Arts and Technology and Ontario Public Service Employees Union* — see (46), *supra*. (47)

Hours of Work

Lateness: company making a new rule concerning lateness; whether company acted reasonably and responsibly when it promulgated the new rule; grievances dismissed. *Re Decor Metal Products and United Automobile Workers, Local 1411; policy grievances*, May 11, 1978. O'Shea — 14 pages. (48)

Illness

Employer refusing to allow grievor to return to work; company doctor's opinion that grievor unable to perform job without undue risk; grievance dismissed. *Re Motor Wheel Corporation of Canada Limited and United Automobile Workers, Local 127; Street grievance*, May 4, 1978. Hinnegan — seven pages. (49)

Return to work: grievor prevented from returning to work after illness; grievor refusing medical procedures to ensure fitness to work; grievance dismissed. *Re Babcock and Wilcox Canada Limited and United Steelworkers of America, Local 2859; Campbell grievance*, April 29, 1978. Majority: Brown, Sanderson — 14 pages; dissent: Wadden. (50)

Incentive Pay

Standards — company changing incentive standard due to changes in methods of production; grievance dismissed. *Re Sheller-Globe of Canada Limited and United Steelworkers of America, Local 4605; Boutilier et al grievances*, May 8, 1978. Weatherill — five pages. (51)

Standards: whether the company was in violation of the collective agreement when it corrected an anomalous situation with respect to incentive pay; grievance dismissed. *Re Slater Steel Industries Limited, Slater Products Division and United Steelworkers of America, Local 3505; union grievance*, May 23, 1978. Weatherill — seven pages. (52)

Interest Arbitration

Salary — teachers' salary increase submitted to arbitration; whether arbitrator may direct form of report to Anti-Inflation Board. *Re Frontenac-Lennox and Addington County Roman Catholic Separate School Board and Branch Affiliates of the Ontario English Catholic Teachers' Association and L'Association Des Enseignants Franco-Ontariens*, April 25, 1978. Majority: Beck, Forsyth — 19 pages; dissent: Gray — ten pages. (53)

Lay-off

Grievor able to perform some duties of junior employees retained; grievor entitled to part-time employment; grievance allowed in part. *Re Dominion Stores Limited and Retail, Wholesale and Department Store Union, Local 429; Tinslay grievance*, May 12, 1978. O'Shea, Lachance, White — 12 pages. (54)

Seniority: employer to recognize seniority subject to retention of qualified work force; grievances allowed. *Re Board of Health of the Regional Municipality of Peel and Ontario Nurse's Association, Local 61; May et al grievances*, April 25, 1978. Majority: Gorsky, Walsh — seven pages; dissent: Gordon — 11 pages. (55)

Seniority: grievors laid off while junior employees retained; whether the collective agreement permits upward bumping; grievances dismissed. *Re Vulcan Industrial Packaging Limited and United Steelworkers of America, Local 6754; J. Camilleri, L. Camilleri and A. Masut grievances*, May 15, 1978. Majority: Weatherill, Telfer — nine pages; did not concur: Kilpatrick. (56)*

Seniority — grievor not able to perform job of junior employee; skill requirement implicit in agreement; grievance dismissed. *Re Muttart Builders' Supplies Brantford and International Woodworkers of America; Mounthey grievance*, May 17, 1978. O'Shea — 14 pages. (57)

Overtime

Assignment — grievor claiming overtime entitlement; whether assignment of overtime to employee in another overtime group violating collective agreement; grievance dismissed. *Re Atlas Steel Company and Canadian Steelworkers' Union, Atlas Division; Cutler grievance*, May 15, 1978. Majority: Ellis, Gray — 11 pages; dissent: Simpson — three pages; addendum: Gray — one page. (58)

Distribution: grievor alleging unequal distribution of overtime; inequality minimal; grievance dismissed. *Re Bristol-Myers Canada Limited and International Chemical Workers Union, Local 302; Chandler grievance*, May 3, 1978. Weatherill, Hollins, Filion — six pages. (59)

Distribution — unequal distribution alleged; distribution as equitable as circumstances permitted; grievance dismissed. *Re Rio Algom Limited, Atlas Steels Division and Canadian Steelworkers' Union, Atlas Division; Swartz grievance*, April 25, 1978. Majority: Brunner, Baldwin — 13 pages; dissent: Simpson — three pages. (60)

Probationary Employees

Part-time employee; whether probationary period pro-rated. *Re Dominion Stores Limited and Retail, Wholesale and Department Store Union* — see (21), *supra*. (61)

Probation period — nurses changing their status from part-time to full-time; calculation of probationary period; grievance allowed. *Re Humber Memorial Hospital Association and Ontario Nurses' Association; union grievance*, May 17, 1978. Adams, Symes, Singer — eight pages. (62)

Probation period — student terminated at end of summer and rehired as a permanent employee two days later; calculation of probationary period; grievance dismissed. *Re Storzal International Limited and United Steelworkers of America, Local 3257; Berryman grievance*, May 2, 1978. Majority: Hinnegan, Byrne — seven pages; dissent: Taylor — one page. (63)

Wages: whether completion of probationary period is required before wage progression rates apply; grievance allowed. *Re Wylain Canada Limited and United Electrical, Radio and Machine Workers of America, Local 513; Sinanan grievance*, May 5, 1978. May — ten pages. (64)

Promotion

Career Development Increment denied: standard of arbitral review of criteria; effect of academic content; grievance dismissed. *Re Carleton University and Carleton University Academic Staff Association; Glass grievance*, April 10, 1978. Palmer — 17 pages. (65)

Qualifications: grievor the senior applicant but refusing to write aptitude test; whether employer entitled to insist on written test to assess ability to perform work; grievance dismissed. *Re Inglis Limited and United Steelworkers of America, Local 4487; Healy grievance*, May 29, 1978. O'Shea — 37 pages. (66)

Qualifications: junior employee appointed to posted job; whether grievor qualified to fill position; grievance dismissed. *Re Canadian National Railway Company and Canadian Telecommunications Union; Conley grievance*, May 15, 1978. Weatherill, Walsh, Dinsdale — six pages. (67)

Qualifications — skill and ability to perform job; management to determine qualifications acting reasonably and in good faith; grievance dismissed. *Re Gould Manufacturing of Canada Limited and International Association of Machinists and Aerospace Workers, Local 1975; Chetcuti grievance*, January 30, 1978. Majority: Rayner, Murray — 12 pages; dissent: Rovers — two pages. (68)

Qualifications: whether grievor had the necessary skill, competence, efficiency and ability to perform the work; grievance allowed. *Re Rotor Electric Company Limited and United Steelworkers of America; Gosse grievance*, May 8, 1978. Majority: O'Shea, Grasso — ten pages; dissent: Wakely — three pages. (69)

Seniority — grievor denied promotion because union and employer had settled earlier grievance by awarding position to junior employee; whether grievor estopped by union action; grievance dismissed. *Re Dominion Stores Limited and Retail, Wholesale and Department Store Union, Local 414; Park grievance*, May 24, 1978. O'Shea, Spaxman, White — eight pages; addendum: Spaxman — one page. (70)

Seniority: grievor entering a training programme following successful application for posted job; grievor's application for another posting before programme completed denied by company; grievance allowed. *Re American Can of Canada Limited and Can Workers' Federal Union, Local 535; Shelly grievance*, May 17, 1978. Majority: O'Shea, Biggs — 17 pages; dissent: Clark — three pages. (71)

Recall

Seniority: employees with less seniority than grievor recalled after lawful strike; whether grievor a former employee on lay-off within meaning of the collective agreement; grievance allowed. *Re Becker Milk Company Limited and Milk and Bread Drivers, Dairy Employees, Caterers and Allied Workers, Local 647; Jones grievance*, May 15, 1978. Adams — ten pages. (72)

Seniority — employer failing to apply seniority provisions because of failure to properly consider qualifications of grievors; whether grievors qualified to perform available work; Medland *et al* grievances allowed; Smith grievance dismissed. *Re Regal Stationery Company Limited and Canadian Paperworkers' Union, Local 300; group grievance*, May 25, 1978. Majority: Hinnegan, How — 24 pages; dissent: Rogers — four pages; addendum: Hinnegan — five pages. (73)*

Redundancy

Whether procedures in the collective agreement were complied with before declaring redundancy; grievance dismissed. *Re Provincial Schools Authority and Federation of Provincial Schools Authority Teachers; group grievance*, undated. Teplitsky — 21 pages. (74)

Scheduling of Work

Assignment of days off — employer establishing one schedule for days off for lead hands and another schedule for other employees; grievance dismissed. *Re Southam Press Limited, The Spectator Division and Hamilton Printing and Graphic Communications Union, Local 176; union grievance*, May 15, 1978. Weatherill, Hynd, Henley — eight pages. (75)

Sick Pay

Entitlement: grievor claiming non-occupational accident benefits under employer-maintained insurance plan; extent of employer's obligations; grievance dismissed. *Re Atlas Steels and Canadian Steelworkers' Union, Atlas Division; unnamed grievance*, May 17, 1978. Majority: Adams, Gray — 20 pages; dissent: Fleury — three pages. (76)

Entitlement: whether an employee must return to work following exhaustion of his bank of sick pay credits and the passing of his anniversary date to receive a new bank of sick pay credits; grievances allowed. *Re Sarnia General Hospital, Hospital Commission of, and London and District Service Workers' Union, Local 220; Verlinde, Skibinski and Irwin grievances*, May 10, 1978. Majority: Johnston, Switzman — 12 pages; dissent: Sanderson — two pages. (77)*

Strike

Concerted refusal by employees to accept overtime work; whether there had been a strike within the meaning of the collective agreement; grievance allowed. *Re Atomic Energy of Canada Limited and Ottawa Atomic Workers Union, Local 1541; company grievance*, May 15, 1978. Majority: Weatherill, Healy — 11 pages; dissent: Bishop — one page. (78)*

Vacation Pay

Calculation — temporary employees; seasonal employees collecting service over several periods of employment; whether vacation pay to be based on total service; grievance allowed. *Re Photo Engravers and Electrotypers Limited and Graphic Arts International Union; policy grievance*, April 7, 1978. Majority: Rayner, Osborne — 13 pages; dissent: Sanderson — three pages. (79)

Entitlement — employees on sick leave following expiration of sick pay benefits; whether entitled to vacation pay; grievances allowed. *Re Northern Telecom Limited and United Automobile Workers; Cogan and DeRaad grievances*, April 18, 1978. Palmer — nine pages. (80)

Vacations

Scheduling: company requiring all of its employees to take two weeks of vacation entitlement at a certain time; grievance allowed. *Re Consolidated-Bathurst Packaging Limited, Hamilton, and International Woodworkers of America, Local 2-69; union grievance*, May 15, 1978. Majority: Burkett, Lennon — 14 pages; dissent: Rogers — three pages. (81)

Scheduling — whether employer can fragment vacation period; grievance allowed. *Re Fanshawe College of Applied Arts and Technology and Ontario Public Service Employees Union* — see (46), *supra*. (82)

Wages

Grievor being paid less than amount stipulated in wage schedule; reduction based on employer-instituted point system; grievance allowed. *Re The Children's Aid Society of Ottawa and Ontario Public Service Employees Union; Papi grievance*, April 24, 1978. Brown, Sanderson, Hunter — 11 pages. (83)

Reduction in hourly rate: company overpayment discontinued; grievance dismissed. *Re Dominion Stores Limited and Retail, Wholesale and Department Store Union, Local 414; Cooke grievance*, April 24, 1978. Majority: Rayner, Sargeant — six pages; dissent: Dahmer — two pages. (84)

Welfare Plans

Probationary employees — whether entitled to reimbursement of O.H.I.P. premiums once probationary period complete; grievance dismissed. *Re Somerville Industries Limited and Canadian Chemical Workers Union; policy grievance*, May 29, 1978. Majority: Brent, Morley — four pages; did not concur: Wohl. (85)

Whether superintendents and salaried persons no longer members of the union may remain members of pension and welfare plans; grievance dismissed. *Re National Elevator and Escalator Association and International Union of Elevator Constructors; union grievance*, April 12, 1978. J.L. Roberts — ten pages. (86)*

Work Assignment

Extra work — union claiming that employer can only assign teachers extra work which involves teaching duties; grievance dismissed. *Re Fanshawe College of Applied Arts and Technology and Ontario Public Service Employees Union* — see (46), *supra*. (87)

Grievors claiming company required them to perform the work of an additional man by changing the work standard; grievance allowed. *Re GSW Appliances Limited and United Steelworkers of America, Local 3129; group grievance*, May 24, 1978. Shime — eight pages. (88)

Remedy for improper assignment: grievor claiming compensation for a truck run allegedly lost because of improper company action; grievance dismissed. *Re Inter-City Truck Lines Limited and Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 141; Bowers grievance*, May 17, 1978. Brent, Singleton, Kobryn — nine pages. (89)

The following awards in interest arbitration under *The Hospital Labour Disputes Arbitration Act* were also filed with the Commission during the month of May, 1978:

Green's Ambulance Service (Simcoe) and London and District Service Workers Union, Local 220; Brown — 16 pages; dissent: Dixon; partial dissent: Walsh — 1 page.

St. Joseph's General Hospital, Thunder Bay and Ontario Nurses' Association (full-time and part-time employees); Brown, Walsh — 28 pages; dissent: Phelps — three pages.

St. Thomas-Elgin General Hospital and Ontario Nurses' Association (full-time and part-time employees); Burkett, Dixon — 15 pages; partial dissent: Walsh — one page.

The awards may be seen at the office of the Commission, 400 University Avenue, 14th floor, Toronto. Copies of awards may be obtained for a fee of 50 cents per page. Orders will be filled on receipt of an application and a cheque or money order payable to the Treasurer of Ontario for the applicable amount, which should be forwarded to: Cashier's Office, Ministry of Labour, 400 University Avenue, Toronto, Ontario M7A 1V6.

Filing Awards

The attention of chairmen of boards of arbitration and sole arbitrators is drawn to the provision of Section 6(2) of the Regulation, which reads: 6.—(2) Every arbitrator shall, within ten days of issuing an award, file a copy thereof with the Commission. This provision would apply to all arbitrators approved under The Ontario Labour-Management Arbitration Commission Act and regardless of whether they were appointed as chairmen or sole arbitrators pursuant to the Act, by the parties or by the Minister.

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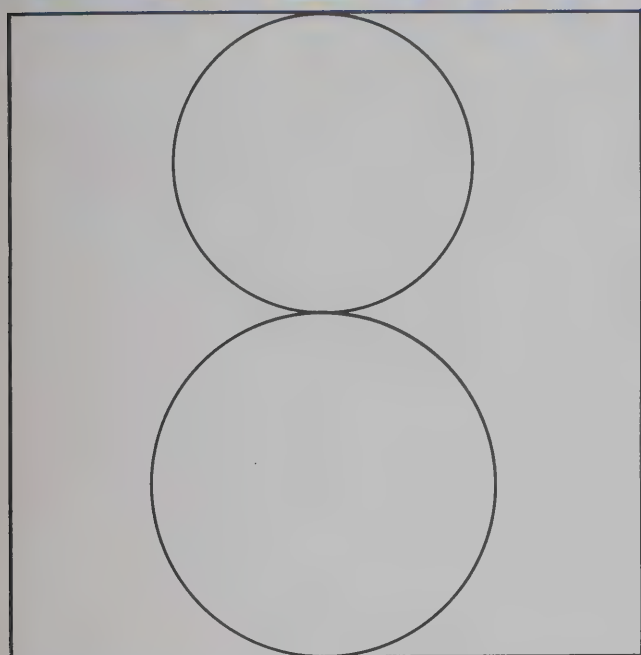
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Awards

The following awards were filed with the Commission during the month of June, 1978, under Section 6(2) of Ontario Regulation 635, R.R.O. 1970.

The summary was prepared at the Faculty of Law, Queen's University, under the supervision of C.G. Simmons, B.A., B.C.L., LL.M., and K.P. Swan, B. Eng., LL.M.

*Indicates award to be reported in full or in part in *Labour Arbitration Cases*.

Arbitrability

Changes in method of providing supply teachers: whether Board has jurisdiction; grievance not arbitrable. *Re The Haldimand Board of Education and Ontario Secondary School Teachers' Federation, District 53; policy grievance*, June 16, 1978. Weatherill, Cazabon, Brown — 10 pages. (1)

Grievor alleging breach of oral back to work agreement: agreement not incorporated into collective agreement; grievance not arbitrable. *Re Decor Metal Products and United Automobile Workers, Local 1411; Ford grievance*, May 31, 1978. Hinnegan — 3 pages. (2)

Bargaining Unit

Job posting: Hourly Unit alleging position wrongly posted within Clerical Unit; grievance dismissed. *Re Union Gas Limited and Canadian Chemical Workers' Union, Local 7, (Hourly Unit); policy grievance*, June 16, 1978. Majority: Hinnegan, Phelps — 5 pages; dissent: Punnett — 3 pages. (3)

Classification

Classification abolished — work previously performed by classification being assigned to apprentices under newly instituted training program; grievance dismissed. *Re Haley Industries Limited and United Steelworkers of America, Local 4820; policy grievance*, June 5, 1978. Majority: Burkett, Healy — 15 pages; dissent: Yule — 2 pages. (4)*

Collective Agreement

Individual fixed term employment contracts: whether individual employment contracts with employees in breach of collective agreement; grievance allowed. *Re Niagara South Board of Education and District 7, Ontario Secondary School Teachers' Federation and District 8, Association des Enseignants Franco-Ontariens; Desjardins et al grievance*, June 19, 1978. Beck — 10 pages. (5)*

Damages

Compensation for unjust discipline — extent of duty of mitigation; onus of proof; grievance allowed. *Re Liquid Carbonic Canada Limited and United Steelworkers of America, Local 12998; McNeil grievance*, June 14, 1978. Majority: Kennedy, Penny — 8 pages; dissent: McDonald. (6)

Unjust suspension: grievor suspended due to incapacity to perform original job; grievor reinstated to work available which he could do; calculation of damages; calculation guidelines set out. *Re Goodyear Canada Inc., New Toronto Factory and Central Distributing Warehouse and United Rubber, Cork, Linoleum and Plastic Workers of America, Local 232; Drinkle grievance*, June 7, 1978. McLaren — 4 pages. (7)

Demotion

Disciplinary demotion — productivity and worker error; action taken after repeated warnings and counselling sessions; grievance dismissed. *Re International Harvester Company of Canada Limited and United Automobile Workers of America, Local 398; Allen grievance*, June 12, 1978. O'Connor — 7 pages. (8)

Non-disciplinary demotion — sleeping on duty: effect of subsequent medical treatment; grievance dismissed. *Re Dorr-Oliver Canada Limited and United Steelworkers of America, Local 4697; Oschefski grievance*, June 19, 1978. Majority: Betcherman, McNaughton — 6 pages; dissent: Drew — 2 pages. (9)

Non-disciplinary demotion: vacancy awarded to grievor created by promotion of another employee; promotion overturned at arbitration; grievor displaced by returning employee; grievance allowed. *Re Dominion Stores Limited and Retail, Wholesale and Department Store Union, Local 414; Hauert grievance*, June 12, 1978. Weatherill, Dahmer, White — 7 pages; addendum: White — 1 page. (10)*

Discharge

Absence from work due to illness — employer satisfying requirement in agreement that absence exceed 90 days in 12 month period and that grievor's case be reviewed before termination; grievance dismissed. *Re Toronto General Hospital and Canadian Union of Public Employees, Local 2001; Edwards grievance*, June 28, 1978. Burkett, Reeve, Fagan — 14 pages. (11)

Absenteeism — employer claiming non-punitive discharge because of grievor's illnesses but failing to show poor prognosis for recovery; conditional reinstatement. *Re DuPont of Canada Limited and Canadian Chemical Workers Union, Local 28; Froats grievance*, June 26, 1978. Majority: Kennedy, Adams — 20 pages; dissent: Binning — 2 pages. (12)

Absenteeism: principles involved in discharge for innocent absenteeism; grievance allowed. *Re Falconbridge Nickel Mines Limited and Sudbury Mine, Mill and Smelter Workers Union, Local 598; McNamara grievance*, June 2, 1978. Majority: Brown, McIntyre — 23 pages; dissent: Mitchnick — 2 pages. (13)*

Assault — horseplay between grievor and fellow employee progressing into assault by grievor; reinstatement without compensation. *Re Weston Bakeries Limited and Milk and Bread Drivers, Dairy Employees, Caterers and Allied Employees, Local 647; Alvino grievance*, May 23, 1978. Rayner, Farrar, Tait — 8 pages. (14)

Culminating incident; cumulative discipline failing to warn grievor of possibility of discharge; suspension substituted. *Re Rexwood Products Limited and Lumber and Sawmill Workers Union, Local 2995; Wheeler grievance*, June 14, 1978. Fraser, Wren, Young — 14 pages. (15)

Culminating incident: grievor interfering with management by communicating with fellow employees regarding proposed shift change; grievance dismissed. *Re The Norfolk Hospital Association at Simcoe, Ontario and London and District Building Service Workers Union, Local 220; Udell grievance*, June 26, 1978. Majority: Brown, Farrar — 28 pages; did not concur: Walsh. (16)

Culminating incident: grievor involved in accident with company vehicle; grievance dismissed. *Re Union Carbide Canada Limited, Gas Products, Sault Ste. Marie Plant and The Oil, Chemical and Atomic Workers Union, Local 9-876; Mainville grievance*, May 19, 1978. Majority: Palmer, McCuaig — 10 pages; dissent: Dungey — 2 pages. (17)

Damage to company property and injury to supervisor during strike: right of employer to discipline employees who commit acts of misconduct during lawful strike; whether memorandum of settlement exonerated wrong doers; grievance dismissed. *Re Gates Rubber of Canada Limited and United Rubber, Cork, Linoleum and Plastic Workers of America, Local 733; Cromwell grievance*, June 16, 1978. Majority: O'Shea, Storie — 19 pages; dissent: Johnston. (18)*

Failure to return from lay-off; recall notice sent by registered letter; grievance dismissed. *Re Indalex, Division of Indal Limited and United Steelworkers of America, Local 2729; Victor grievance*, May 31, 1978. Kruger — 7 pages. (19)

Improper conduct as nursing aide: grievor involved in altercation with fellow employee and upsetting patients; whether penalty justified by prior record; reinstatement without compensation. *Re Lincoln Place Nursing Home and Service Employees Union, Local 204; Vieira grievance*, June 21, 1978. Majority: Brunner, Wren — 28 pages; dissent: McKillop — 4 pages. (20)

Insubordination: grievor visiting plant while off-duty and insulting and threatening supervisors; grievor apparently under the influence of prescribed medication; whether employer made adequate investigation; suspension substituted. *Re TCF of Canada Limited and Amalgamated Clothing and Textile Workers' Union, Local 1332; Wilson grievance*, June 23, 1978. McLaren — 19 pages. (21)

Offensive and insulting conduct by instructor to student; problems in weighing evidence; grievance dismissed. *Re Toronto Institute of Medical Technology and Ontario Public Service Employees Union; Jarvis grievance*, June 12, 1978. Majority: Kennedy, Phelps — 27 pages; dissent: Trower — 16 pages. (22)

Offensive behaviour — nurse's abusive conduct to patient compounded by poor care on occasion; past record does not support discharge; reinstatement without compensation. *Re St. Joseph's Hospital, Hamilton and Ontario Nurses' Association; Kleefstra grievance*, June 8, 1978. Brown, Sanderson, McIntyre — 46 pages. (23)

Participation in illegal strike — grievor singled out for serious discipline because of former union office and erroneous belief by employer that he instigated strike; grievance allowed. *Re City of Sudbury, The Corporation of and Canadian Union of Public Employees, Local 1662; Clement grievance*, June 29, 1978. Majority: O'Connor, Dungey — 10 pages; dissent: Carlyle — 7 pages. (24)

Theft alleged: grievor observed going through wallet of patient in nursing home; whether employer considered all the evidence and possibility of an innocent explanation; suspension substituted. *Re Extendicare Limited and Service Employees Union, Local 204; Piner grievance*, June 21, 1978. Majority: Kruger, Cooper — 9 pages; dissent: Bernardo. (25)

Theft of customer's property: whether grounds *per se* for discharge; jurisdiction of arbitration to amend penalty; suspension substituted. *Re Air Canada and International Association of Machinists and Aerospace Workers, District Lodge 148; Forbes grievance*, June 20, 1978. Swan — 11 pages. (26)*

Discipline

Absence — grievor failing to notify employer of absence for illness by time specified; grievance allowed. *Re Woodstock General Hospital and London and District Service Workers Union, Local 220; Moskal grievance*, May 31, 1978. Brown, Sanderson, Switzman — 8 pages. (27)

Absence: grievor observed working on farm during period of absence from job for alleged medical reasons; grievance allowed. *Re International Harvester Company of Canada Limited and United Automobile Workers, Local 127; Carnegie grievance*, June 1, 1978. Hinnegan — 6 pages. (28)

Abuse of privileges: grievor improperly filling out ticket for reduced-fare travel and displacing regular customer; whether intentional; grievance allowed. *Re Air Canada and Canadian Air Line Employees' Association; Miller grievance*, June 27, 1978. Simmons — 10 pages. (29)

Carelessness: failure to ensure quality of load conforms to specifications; importance of quality clearly brought home to employees; grievance dismissed. *Re Red-D-Mix Concrete Company; A Division of Standard Industries Limited and Teamsters, Chauffeurs, Warehousemen and Helpers Union, Local 880; Matte grievance*, June 8, 1978. Brent, Wray, Kobryn — 10 pages. (30)

Culminating incident: grievor failing to remain at scene after accident with company vehicle; past history of unsatisfactory driving performance; grievance dismissed. *Re W.J. Hyatt Limited and International Union, United Brewery, Flour, Cereal, Soft Drink and Distillery Workers of America, Local 304; McIntosh grievance*, June 6, 1978. Brown — 20 pages. (31)

Culminating incident: grievor leaving company premises without permission after temporary assignment to new job; grievance allowed in part. *Re Bristol-Myers Products of Canada Limited and International Chemical Workers' Union, Local 302; Chandler grievance*, May 23, 1978. Majority: Palmer, Wakely — 10 pages; dissent: Sloan. (32)

Grievor allowing alcoholic beverages to be conveyed in vehicle under his control; grievance allowed in part. *Re City of Toronto, Corporation of and Toronto Civic Employees Union, Local 43; Gagliardi grievance*, June 6, 1978. Kates, Paulin, Tate — 11 pages. (33)

Insubordination: grievor refusing to take mandatory company-sponsored hearing test; grievance dismissed. *Re Keeprite Products Limited, Unifin Division and United Automobile Workers, Local 27; Pullman grievance*, June 7, 1978. Hinnegan — 5 pages. (34)

Insubordination — refusal to accept transfer; grievor conducting himself in unauthorized and insubordinate manner; grievance allowed in part. *Re Ontario Hydro and Local Union 1788 of the International Brotherhood of Electrical Workers; Draper grievance*, June 15, 1978. Majority: O'Shea, Riggs — 9 pages; dissent: Fisher — 1 page. (35)

Insubordination — refusal to perform overtime; grievors shifted from original location of voluntary overtime and refused to work in new location; reprimand substituted. *Re Bell Canada and Communications Workers of Canada; Miller and Ross grievances*, June 14, 1978. Majority: Springate, Gray — 11 pages; partial dissent: Fagan — 2 pages. (36)*

Participation in political strike — whether unique situation involved in Day of Protest and uneven approach to the strike in industrial community makes harsh discipline inappropriate; lesser penalty substituted. *Re The International Nickel Company of Canada, Limited and United Steelworkers of America; St. Jean grievance*, June 22, 1978. Shime, Keenan, Gerard — 7 pages. (37)

Possession of stolen goods: grievor found with employer's property at rear door; no satisfactory explanation offered; grievance dismissed. *Re Dominion Stores Limited and Retail, Wholesale and Department Store Union, Local 414; Lacelle grievance*, June 8, 1978. Barron, Sargeant, Curtis — 9 pages. (38)

Unsatisfactory work performance: careless workmanship resulting in substantial damage to company property; grievance dismissed. *Re Dresser Industrial Products Ltd. and United Steelworkers of America, Local 7339; Ladoucer grievance*, June 7, 1978. Adams, Gordon, Drew — 5 pages. (39)

Unsatisfactory work performance: grievor's carelessness resulting in substantial damage to company property; grievance allowed in part. *Re Canadian Cannery Limited (Can Plant No. 93) and International Association of Machinists and Aerospace Workers, Lodge 863; Brennan grievance*, May 31, 1978. Brunner, Tate, Wright — 19 pages; addenda: Tate — 1 page; Wright — 1 page. (40)

Estoppel

Delay in filing grievance — grievor claiming reliance on company representations with respect to grievor's position; grievance dismissed. *Re Dominion Stores Limited and Retail, Wholesale and Department Store Union, Local 414; Parr grievance*, May 16, 1978. Rayner, White, Spaxman — 12 pages. (41)

Equitable estoppel — whether doctrine may be applied by boards of arbitration or arbitrators; grievance arbitrable. *Re Dominion Stores Limited and Retail, Wholesale and Department Store Union, Local 414; Parr grievance*, October 20, 1977. Majority: Rayner, Spaxman — 8 pages; dissent: White — 2 pages. (42)

Grievance Procedure

Scope of the grievance — whether grievance related to isolated incident or to continuing dispute; single incident only involved; grievance withdrawn. *Re Robertshaw Controls (Canada) Ltd. and United Electrical, Radio and Machine Workers; Douglas grievance*, June 21, 1978. Rayner — 3 pages. (43)

Settlement: employer reconsidering initial decision in favour of grievance; union requesting order to implement settlement; grievance allowed. *Re Borough of Scarborough, The Corporation of and Canadian Union of Public Employees, Local 368; Littlejohn grievance*, May 25, 1978. Brandt, Wren, Sanderson — 6 pages. (44)

Whether teachers possessing right to carry own grievances to arbitration concerning individual contracts of employment; grievances not arbitrable. *Re The York County Board of Education and Joseph Turko et al; Turko et al grievances*, May 31, 1978. Brown, Linton, Rogers — 13 pages; addendum: Linton — 1 page. (45)

Hiring

Union hiring provisions — employer filling vacancy by internal transfer; whether a breach of hiring provisions. *Re Dover Corporation (Canada) Limited and International Union of Elevator Constructors, Local 90; employer grievance; Sharp, Jagger and Gallant grievances*, June 8, 1978. O'Shea — 20 pages; addenda — 90 pages. (46)

Holiday Pay

Entitlement: grievor submitting resignation effective first normal working day following statutory holiday; holiday pay denied; grievance allowed. *Re Northern Telecom Limited and United Automobile Workers, Local 1837; union grievance*, May 18, 1978. Palmer — 9 pages. (47)

Entitlement: qualifying days; grievor absent on qualifying day due to accident; grievance allowed. *Re Hyde Spring and Wire (Canada) Limited and United Automobile Workers, Local 397; Green grievance*, May 8, 1978. Rayner — 5 pages. (48)

Hours of Work

Shift assignment: grievor moved from shift despite priority because of seniority; grievance allowed. *Re Le Droit Ltée and L'Union Typographique d'Ottawa, Local 102; Charlebois grievance*, June 12, 1978. Weatherill — 7 pages. (49)

Split shift: two half hour breaks provided; lunch break not paid; whether second should be paid or is time off in split shift; grievance allowed. *Re The City of Welland and Amalgamated Transit Union, Local 107; policy grievance*, June 5, 1978. Majority: McCulloch, Walsh — 6 pages; dissent: Reilly — 1 page; appendices — 8 pages. (50)

Illness

Whether a medical risk arising from employee's illness constitutes reasonable grounds for dismissal or refusal of promotion; whether job's physical surroundings should be considered; grievance dismissed. *Re Kimberly-Clark of Canada Limited and International Chemical Workers Union, Local 813; Smith grievance*, June 9, 1978. Burkett — 16 pages. (51)*

Job Evaluation

Change in wage rate for factors identified in job description — employer failing to advise union as required in agreement; whether change effective; grievance allowed. *Re Northern Telecom Limited and Communications Workers of Canada; Bisschop grievance*, June 23, 1978. Kates — 10 pages. (52)

Job Posting

Change of duties within classification: grievor moved from bed care nurse to relief nurse; whether a transfer requiring job posting; grievance dismissed. *Re Hamilton-Wentworth, Regional Municipality of and The Ontario Nurses' Association, Local 72; Offiong grievance*, June 13, 1978. Majority: Andrews, Noble — 9 pages; did not concur: Switzman. (53)

Lay-Off

Bumping rights: what constitutes possession of necessary qualifications and experience without the need of training; grievance allowed. *Re S.A. Armstrong Limited and United Steelworkers of America; Donnelly grievance*, June 5, 1978. O'Shea — 9 pages. (54)

Bumping rights: whether available work requires certification by Canadian Welding Bureau; grievance dismissed. *Re Dahmer Steel Limited and United Steelworkers of America, Local 7138; Kyprianow grievance*, May 19, 1978. Palmer — 6 pages. (55)

Bumping rights: whether collective agreement permitting exercise of plant-wide seniority across classifications; grievance dismissed. *Re Sunbeam Corporation (Canada) Limited and Federal Labour Union Number 24762; Mintoff grievance*, May 30, 1978. Johnston, Heather, Weisbach — 6 pages; addendum: Weisbach — 1 page. (56)

Recall rights: whether employees are governed by agreement existing at date of lay-off or by new agreement instituted in the interim; whether laid-off employees are still employees for purposes of the new agreement; grievance allowed. *Re Keeprite Products Limited and Keeprite Workers Independent Union; policy grievance*, June 6, 1978. Rayner — 4 pages. (57)

Super-seniority clause for benefit of union officials: company gave notice of layoff to such individuals forcing them to claim super-seniority; whether giving notice contrary to collective agreement; grievance dismissed. *Re DeLaval Company Limited and International Association of Machinists and Aerospace Workers, Lodge 872; union grievance*, June 12, 1978. Brunner, Heather, Wren — 7 pages. (58)

Leave of Absence

Grievor granted leave to preside over religious ceremonies: whether leave should be with or without pay; grievance dismissed. *Re Kent County Board of Education and Ontario Secondary School Teachers' Federation, District 2; Rose grievance*, May 26, 1978. Ianni — 5 pages. (59)

Management Rights

Right to search: whether company may routinely require employee to submit to inspection of lunch pails and parcels; grievance dismissed. *Re Inco Metals Company and United Steelworkers of America; Laurin grievance*, June 16, 1978. Majority: Weatherill, Stone — 8 pages; dissent: Size — 16 pages. (60)*

Overtime

Entitlement — grievor claiming that work assigned to employee who was not a member of relevant overtime group; grievance dismissed. *Re Atlas Steels and Canadian Steelworkers' Union, Atlas Division; Markowski grievance*, June 27, 1978. Majority: Brent, Ronson — 10 pages; dissent: Simpson — 4 pages. (61)

Entitlement: work normally done by millwrights allegedly assigned to a lower classification; grievance dismissed. *Re Fruehauf Trailer Company of Canada Limited and United Automobile Workers; Bryan grievance*, June 12, 1978. Shime — 7 pages. (62)

Entitlement: work to be assigned to employees normally performing work; grievor in same classification as employees normally performing work; grievance allowed. *Re Spruce Falls Power and Paper Company Limited and Sawmill Workers' Union, Local 2995; Soucy grievance*, May 23, 1978. Majority: Fraser — 15 pages; dissent: Gray — 2 pages; partial dissent: Wren — 3 pages. (63)

Scheduled Saturday overtime: whether compulsory or voluntary; grievance dismissed. *Re Mansfield-Denman General Company Limited, Tire Division, Barrie and United Rubber, Cork, Linoleum and Plastic Workers of America, Local 536; Kitchen grievance*, June 22, 1978. Burkett, Collins, Dinsdale — 11 pages. (64)

Probationary Employee

Probationary period: grievor achieved full-time status only 16 days before discharge; whether hours worked on part-time basis count in probationary period; grievance not arbitrable. *Re Dominion Stores Limited and Retail, Wholesale and Department Store Union, Local 414; Redford grievance*, June 26, 1978. Majority: Brown, White — 15 pages; dissent: Spaxman — 2 pages. (65)

Promotion

Ability to perform work — grievor failing to prove ability on the job and being replaced by junior employee; whether employer obligated to give grievor basic instruction in new job; grievance dismissed. *Re Niagara Structural Steel (St. Catharines) Limited and United Steelworkers of America, Local 7012; Mozgial grievance*, June 26, 1978. Majority: O'Connor, Cameron — 6 pages; dissent: Sharpe — 2 pages. (66)

Qualifications: different selection criteria for posted and non-posted vacancies; whether proper procedure followed; grievance allowed. *Re Salvation Army Grace Hospital and Service Employees' Union, Local 210; Charlebois grievance*, June 21, 1978. Majority: Samuels, Coburn — 16 pages; dissent: Burnell — 2 pages. (67)

Qualifications: grievor claiming right to a reasonable trial and training in position; whether company has discretion in granting training; grievance allowed. *Re Pirelli Cables Limited and United Steelworkers of America, Local Union 3021; Campagnolo grievance*, June 12, 1978. O'Shea — 10 pages. (68)

Qualification: job criteria poorly defined; grievor's reliability cast in doubt by disciplinary record; grievance dismissed. *Re Rema Tip Top Rubber Company and United Steelworkers of America; Dagenais grievance*, June 13, 1978. Majority: McLaren, Buckland — 16 pages; did not concur: D'Angelo. (69)

Qualifications: leadership capabilities; grievance dismissed. *Re Canadian Cannery Limited and Canadian Food and Allied Workers, Local 403; Thorne grievance*, June 20, 1978. Majority: Weatherill, Henley — 6 pages; dissent: Dayman. (70)

Qualifications: leadership qualities; grievance allowed. *Re Public Utilities Commission of London, Ontario and Canadian Union of Public Employees, Local 4; Kempa grievance*, May 29, 1978. McLaren, Belecky, Clark — 21 pages. (71)

Qualifications — relatively equal qualifications; whether grievor's qualifications relatively equal; grievance dismissed. *Re Spruce Falls Power and Paper Company Limited and Kimberly-Clark of Canada Limited and Canadian Paperworkers National Union, Local 89; Alie grievance*, June 15, 1978. Majority: Brown, Clawson — 16 pages; addendum: Weisbach — 1 page. (72)

Qualifications — whether employee qualified according to collective agreement; grievance dismissed. *Re Canadian Broadcasting Corporation and Association of Television Producers and Directors (Toronto); union grievance*, June 8, 1978. Brunner — 17 pages. (73)

Qualifications: whether grievor possessing relatively equal qualifications for the job; grievance allowed in part. *Re Falconbridge Nickel Mines Limited and Sudbury Mine, Mill and Smelter Workers Union, Local 598; Richer grievance*, May 31, 1978. Majority: Brown, Tester — 19 pages; dissent: Gordon — 3 pages. (74)

Recall

Notification of recall — two attempts to notify grievor; grievance dismissed. *Re Coca-Cola Ltd. and Canadian Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers; Kempmann grievance*, June 12, 1978. McLaren — 9 pages. (75)

Qualifications — performance records a factor; whether proper criteria and procedures followed in evaluating performance record; grievance allowed. *Re The Becker Milk Company Limited and Milk and Bread Drivers, Dairy Employees, Caterers and Allied Workers, Local Union 647; McPherson grievance*, June 21, 1978. Brent — 12 pages. (76)

Qualifications — performance record a factor; whether proper criteria and procedures used in evaluating performance record; grievance dismissed. *Re The Becker Milk Company Limited and Milk and Bread Drivers, Dairy Employees, Caterers and Allied Workers, Local Union 647; Waye grievance*, June 21, 1978. Weatherill — 9 pages. (77)

Qualifications: work available in two classifications; grievor capable of performing work of one classification; whether entitled to recall; grievance allowed. *Re International Harvester Company of Canada Limited and United Automobile Workers of America, Local 398; union grievance*, June 12, 1978. O'Connor — 6 pages. (78)

Scheduling of Work

Incentive earnings — earnings reduced by scheduling; materials stockpiled awaiting production; whether employee entitled to be assigned piece work whenever available; grievance dismissed. *Re Outboard Marine Corporation of Canada Limited and United Steelworkers of America, Local 5009; Hunt grievance*, June 13, 1978. Hinnegan — 5 pages. (79)

Shift change — employer implementing rotating shifts rather than regular shifts; whether permitted by agreement; grievance dismissed. *Re Board of Governors of the Riverdale Hospital and Canadian Union of Public Employees, Local 79; policy grievance*, June 22, 1978. Majority: Shime, Binning — 9 pages; dissent: Tate — 3 pages. (80)*

Transfer

Non-disciplinary transfer: company unilaterally transferring grievor after accident alleging inability to perform work safely; grievance allowed. *Re Gould Manufacturing of Canada Limited, Burgess Division and International Molders and Allied Workers' Union, Local 115; Marinelli grievance*, June 2, 1978. Majority: Burkett, Wohl — 14 pages; partial dissent: Storie — 2 pages; addendum: Wohl — 1 page. (81)*

Request by employee for transfer — employer required to consider request; standard of consideration necessary; grievance dismissed. *Re Toronto East General Hospital and Ontario Nurses' Association; Raj grievance*, June 12, 1978. Majority: Brandt, Filion — 12 pages; did not concur: Switzman. (82)

Temporary transfer — whether seniority rights can be exercised in temporary transfers; whether seniority is plant-wide; grievance allowed. *Re Sheldons Engineering Limited and United Steelworkers of America, Local 2931; Noseworthy grievance*, June 15, 1978. Brown, Payette, Wadden — 10 pages. (83)

Union Officers

Transfer — employer transferring stewards out of department but retaining employee to perform some work; whether steward's right under agreement not to be transferred dependent on amount of work available; grievance allowed. *Re Goodyear Canada Inc. Bowmanville Factory and Bowmanville Reclaim Plant and United Rubber, Cork, Linoleum and Plastic Workers of America, Local 189; policy grievance*, June 26, 1978. Majority: Brown, Tate — 12 pages; dissent: Furlong — 2 pages. (84)*

Transfer — union president transferred because of effect of union duties on job performance; whether conflict between union activities and duties as an employee sufficient to justify transfer; grievance dismissed. *Re Worthington (Canada) Limited and International Association of Machinists and Aerospace Workers, Local Lodge 1673; Wilson grievance*, June 12, 1978. Majority: McLaren, McNaughton — 15 pages; dissent: Chertkoff — 3 pages. (85)

Union Security

Employment of non-union members — union accusing employer of hiring non-union members and failing to dismiss employees who had lost their union status; grievances allowed in part. *Re R.E. Harding Ltd. and Sheet Metal Workers' International Association, Local 269; policy grievances*, June 27, 1978. Majority: Simmons, Quaife — 16 pages; did not concur: Mullinger. (86)

Vacation Pay

Calculation: interpretation of "hours worked"; grievance denied. *Re Canadian Car Division Hawker-Siddeley of Canada Limited and United Automobile Workers; policy grievance*, June 17, 1978. Swan — 10 pages. (87)

Calculation: whether total earnings of vacation year includes indirect earnings; grievance allowed. *Re Ontario Housing Corporation and Canadian Union of Public Employees, Local 768; policy grievance*, June 16, 1978. Brown — 11 pages. (88)

Vacations

Scheduling — management claiming exclusive control over vacation scheduling; grievance dismissed. *Re Borough of North York, The Corporation of and The North York Civic Employees' Union, Local 94; policy grievance*, May 25, 1978. Kruger — 8 pages. (89)

Scheduling: whether both plants must have same vacation shutdown period — effect of past practice; whether posted notice of vacation shutdown can be subsequently withdrawn; grievance allowed. *Re Bendix Home Systems, Limited and United Brotherhood of Carpenters and Joiners of America, Local 3054; policy grievance*, June 16, 1978. Brandt — 7 pages. (90)

Wages

Calculation of wage rates: union claiming clause in old agreement concerning wage adjustments applicable to new agreement; grievance dismissed. *Re Ontario English Catholic Teachers Association and Office and Professional Employees International Union; policy grievance*, May 15, 1978. Rayner — 4 pages. (91)

Red-circling: voluntary demotion on discontinuance of operation; refusal to accept promotion to higher rated job; red-circling suspended; grievance dismissed. *Re International Nickel Company of Canada Limited and United Steelworkers of America, Local 6500; Valiquette grievance*, May 15, 1978. Majority: Brown, Stone — 12 pages; dissent: Gerard — 3 pages. (92)

Shift bonus — whether casual employees entitled to shift bonus under collective agreement; grievance dismissed. *Re Borough of North York, The Corporation of and The North York Civic Employees' Union, Local 94; union grievance*, May 26, 1978. Kruger — 5 pages. (93)

Temporary transfer: employees performing work similar in nature to higher classification; whether entitled to pay at higher classification rate; grievance dismissed. *Re Etobicoke General Hospital and Canadian Union of Operating Engineers, Local 101; union grievance*, May 19, 1978. Majority: Palmer, Drmaj — 6 pages; dissent: Cole — 2 pages. (94)

Temporary transfer to higher rated job — grievor contending entitlement to "red-circling" at higher wage rate upon resumption of regular duties; grievance dismissed. *Re Canadian Vinyl Fabrics, Stauffer Chemical Company of Canada Limited and United Steelworkers of America, Local 13286; Hosein grievance*, May 31, 1978. Shime, Cook, Muselius — 4 pages. (95)

Welfare Plans

Disability insurance — grievor not actively employed when plan came into effect and not totally disabled as defined in policy; whether policy inconsistent with agreement; grievance dismissed. *Re Town of Whitby, The Corporation of and International Association of Fire Fighters, Local 2036; Badgley grievance*, June 26, 1978. Brown — 12 pages. (96)

Employees on lay-off: whether entitled to payment of dental plan premium by employer; grievance dismissed. *Re G.T.E. Automatic Electric (Canada) Limited and International Union of Electrical, Radio and Machine Workers, Local 526; policy grievance*, June 14, 1978. Majority: Adams, Healy — 15 pages; dissent: Herman — 6 pages. (97)*

Work Assignment

Company dispatching city drivers on run from Toronto terminal to Burlington terminal: highway drivers claiming violation of collective agreement; grievances dismissed. *Re Thibodeau-Finch Express Limited and Teamsters' Local Union Number 938; Armstrong, McCormick grievances*, June 2, 1978. Majority: Brent, Fosbery — 10 pages; dissent: Marinelli. (98)

Janitorial duties assigned to operating engineer: grievance dismissed. *Re Chrysler Canada Limited and Canadian Union of Operating Engineers, Local 102; Conley grievance*, June 12, 1978. McLaren — 11 pages. (99)

Non-bargaining unit employee performing bargaining unit work for training purposes: whether certain work reserved for bargaining unit members; grievance dismissed. *Re Canadian Standards Association and Canadian Union of Public Employees; policy grievance*, June 16, 1978. Majority: O'Shea, Rennie — 10 pages; did not concur: Millage. (100)

Seniority: trip assigned to junior drivers when grievor was available; whether grievor met required burden of proof; grievance dismissed. *Re International Carriers Limited and Teamsters, Chauffeurs, Warehousemen and Helpers Union, Local 880; Brewster grievance*, May 10, 1978. Majority: Stewart, Sefton — 8 pages; did not concur: Kobryn. (101)

The following awards in interest arbitrations under *The Hospital Labour Disputes Arbitration Act* were also filed with the Commission during the month of June, 1978.

The York Regional Board of Health and Ontario Nurses' Association, Adams, Murray — 48 pages; partial dissent: Walsh — 1 page; dissent: Murray — 12 pages.

Shaver Hospital for Chest Diseases and Ontario Nurses' Association, Burkett, Dixon, Walsh — 2 pages.

Stratford General Hospital and Ontario Nurses' Association, Burkett — 9 pages; partial dissent: McKillop — 2 pages; partial dissent: Walsh.

Peter Nursing Home Limited and Service Employees Union, Local 210, Brown, Bartlet, Hughes — 21 pages.

Wellesley Hospital and Group of Hospital (43 in number) and Service Employees Union, Locals 183 (Belleville), 268 (Thunder Bay) 532 (Hamilton), 204 (Toronto), 478 (North Bay) and 777 (Toronto), Teplitsky, Geiger — 14 pages; partial dissent: Filion — 6 pages.

Kilean Lodge Incorporated and Service Employees Union, Local 204, Teplitsky, Geiger, O'Byrne — 7 pages.

The Trenton Memorial Hospital and Ontario Nurses' Association, (full-time and part-time nurses), Teplitsky, Walsh, Baker — 94 pages.

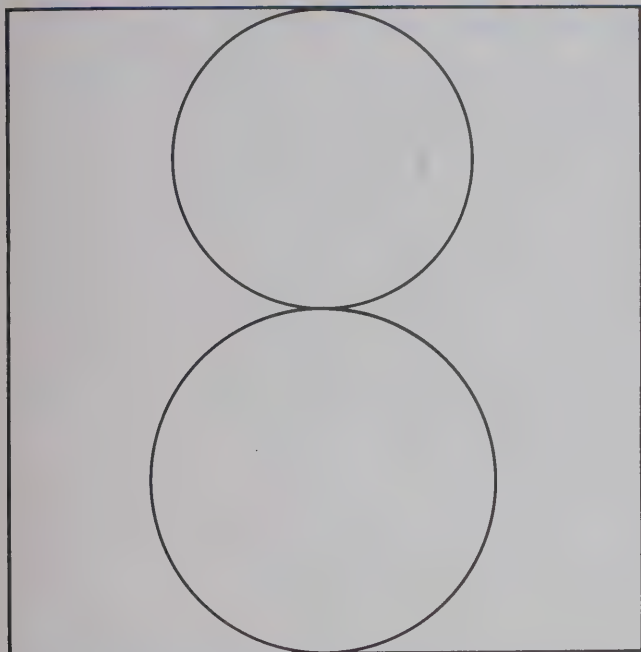
The awards may be seen at the office of the Commission, 400 University Avenue, 14th floor, Toronto. Copies of awards may be obtained for a fee of 50 cents per page. Orders will be filled on receipt of an application and a cheque or money order payable to the Treasurer of Ontario for the applicable amount, which should be forwarded to: Cashier's Office, Ministry of Labour, 400 University Avenue, Toronto, Ontario M7A 1V6.

Filing Awards

The attention of chairmen of boards of arbitration and sole arbitrators is drawn to the provision of Section 6(2) of the Regulation, which reads: 6.—(2) Every arbitrator shall, within ten days of issuing an award, file a copy thereof with the Commission. This provision would apply to all arbitrators approved under The Ontario Labour-Management Arbitration Commission Act and regardless of whether they were appointed as chairmen or sole arbitrators pursuant to the Act, by the parties or by the Minister.

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Monthly Bulletin



The Ontario Labour-Management
Arbitration Commission

His Honour Judge Walter Little, Chairman
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Hon. Robert Elgie, M.D., Minister
T.E. Armstrong, QC, Deputy Minister

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Awards

The following awards were filed with the Commission during the month of July, 1978, under Section 6(2) of Ontario Regulation 635, R.R.O. 1970.

The summary was prepared at the Faculty of Law, Queen's University, under the supervision of C.G. Simmons, B.A., B.C.L., LL.M., and K.P. Swan, B. Eng., LL.M.

*Indicates award to be reported in full or in part in *Labour Arbitration Cases*.

Change of Address and Telephone Number

The following change should be noted, effective immediately: Larry A. Roine, Suite 503, 255 Albert Street, Ottawa, Ontario, K1P 6A9; telephone (613) 233-1171.

Arbitrability

Discipline — employer memorandum directing close supervision of employee: whether part of disciplinary record; grievance not arbitrable. *Re The Children's Aid Society of Ottawa and Ontario Public Service Employees' Union; Shideler grievance*, June 12, 1978. Majority: Abbott, Filion — 6 pages; dissent: Hunter — 6 pages. (1)*

Right of former employee to grieve: when right vests; grievance arbitrable. *Re Northern Telecom Limited, Bramalea and United Electrical, Radio and Machine Workers, Local 531; Fischer grievance*, July 4, 1978. Samuels — 9 pages. (2)

Union nominee withdrawing from board of arbitration; whether grievance withdrawn. *Re Dominion Stores Limited and Retail, Wholesale and Department Store Union, Local 414; Leneeuw grievance*, July 17, 1978. Interim award: O'Shea, White, Spaxman — 4 pages. (3)

Bereavement Pay

Bereavement pay affected by misunderstanding about scheduled day off: responsibility of employee to meet schedule; grievance dismissed. *Re Falconbridge Nickel Mines Limited and Sudbury Mine, Mill and Smelter Workers Union, Local 598; Murphy grievance*, June 30, 1978. Brown — 9 pages. (4)

Board of Arbitration

Jurisdiction in classification arbitration; jurisdiction defined. *Re City of St. Catharines, The Corporation of and Canadian Union of Public Employees, Local 157; union grievance*, July 19, 1978. Interim award: McLaren — 4 pages. (5)

Classification

Grievor claiming that he should be classified as a tradesman: whether grievor performing primarily tradesman's work or whether there is overlap of responsibilities; grievance dismissed. *Re Niagara College and Ontario Public Service Employees Union; Bethune grievance*, June 22, 1978. Majority: Rayner, Mason — 7 pages; dissent: Trower — 2 pages. (6)

No written job descriptions: union not proposing classification change at time of negotiating collective agreement; grievance dismissed. *Re Jim Walter Building Products Limited and United Electrical, Radio and Machine Workers of America, Local 542; group grievance*, July 14, 1978. Kruger — 4 pages. (7)

Wage rate for new classification: whether new classification actually created; grievance dismissed. *Re The Toronto Hydro-Electric System and Canadian Union of Public Employees, Local 1; union grievance*, June 26, 1978. Adams — 14 pages. (8)

Contracting Out

Grievor claiming entitlement to work prior to his shift which was contracted out: no remedy provided by the agreement; grievance dismissed. *Re Inter-City Truck Lines Limited and Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 141; O'Neill grievance*, June 21, 1978. Majority: Stewart, Fosbery — 19 pages; dissent: Kobryn — 3 pages. (9)

Damages

Mitigation of damages for improper lay-off: refusal to accept part-time work; grievance allowed. *Re Dominion Stores Limited and Retail, Wholesale and Department Store Union, Local 414; Beitz grievance*, June 30, 1978. Majority: Brown, Spaxman — 10 pages; dissent: White — 2 pages. (10)*

Unjust discharge: grievor remaining at work only four hours after reinstatement; effect on calculation of damages; damages awarded. *Re Dominion Stores Limited and Retail, Wholesale and Department Store Union, Local 414; Graziano grievance*, July 4, 1978. Supplementary award. Majority: Kennedy, Spaxman — 12 pages; dissent: White; addendum — Spaxman — 1 page. (11)

Unjust discharge — part-time employee on irregular shifts: damages to be calculated to place grievor in same position as if she had been working. *Re City of Sarnia, The Corporation of, Marshall Gowland Manor and Ontario Nurses' Association, Local 116; DuChene grievance*, June 13, 1978. Supplementary award. Majority: Palmer, Switzman — 5 pages; dissent: Gilmore. (12)

Discharge

Absence without leave — grievor going abroad suddenly because of illness in family: grievor failing to make prior arrangements with employer and failing to communicate reasons justifying extension of absence; grievance dismissed. *Re The Steel Company of Canada, Limited, Hilton Works and United Steelworkers of America, Local 1005; Ditroi grievance*, July 7, 1978. Majority: McLaren, Ronson — 17 pages; dissent: Morgan. (13)

Absence without leave — whether a reasonable explanation was established by medical certificates; suspension substituted. *Re Queensway General Hospital and Canadian Union of Public Employees, Local 1106; Nidd grievance*, July 4, 1978. Majority: Johnston, Switzman — 17 pages; dissent: Dinsdale — 6 pages. (14)

Absenteeism: grievor unlikely to be capable of regular attendance in the future; grievance dismissed. *Re Kimberly-Clark of Canada Limited and Canadian Paperworkers Union, Local 307; Deyman grievance*, July 17, 1978. Brown — 28 pages. (15)

Absenteeism — innocent absenteeism: onus on grievor to show capability of regular attendance in future; grievance dismissed. *Re Niagara Structural Steel (St. Catharines) Limited and United Steelworkers of America, Local 7012; Jane grievance*, June 26, 1978. Majority: O'Shea, Cameron — 19 pages; dissent: Sharp — 2 pages. (16)*

Carelessness — grievor failing to clean tank trailer as instructed; previous record considered; suspension substituted. *Re Provost Industrial Tankers Limited and The Christian Labour Association of Canada*; Smiley grievance, July 10, 1978. O'Connor — 10 pages. (17)

Carelessness: grievor operating grinder in unsafe manner and damaging other equipment through negligence; prior record considered; grievance dismissed. *Re Orenstein and Koppel Canada Limited and International Association of Machinists and Aerospace Workers, Local 1740*; Williamson grievance, July 10, 1978. Gorsky, McDermott, Tate — 13 pages. (18)

Falsification of application for employment: prior conviction for theft concealed; grievance dismissed. *Re Dominion Stores Limited and Retail, Wholesale and Department Store Union, Local 414*; McDonald grievance, July 17, 1978. Majority: Weatherill, White — 8 pages; dissent: Barron — 1 page. (19)

Falsification of time card: penalty established in collective agreement; grievance dismissed. *Re Huyck Canada Limited and Canadian Labour Congress Federal Union No. 1632*; Saunders and LeBlanc grievance, June 21, 1978. O'Shea. Weisbach, Sanderson — 12 pages; addendum: Weisbach — 1 page. (20)

Grievor refusing to attend arbitration proceedings and give evidence; grievance dismissed. *Re Atomic Energy of Canada Limited and The Society of Professional Engineers and Associates*; Williams grievance, July 14, 1978. Curtis, Posen, Sanderson — 3 pages; addendum: Posen — 2 pages. (21)

Incompetence — grievor not meeting conditions established following previous unsatisfactory work performance: employer relying on an employee assessment report without supporting proof; suspension substituted. *Re Scarborough General Hospital and Ontario Nurses' Association*; Harris grievance, June 28, 1978. Majority: Brunner, Switzman — 27 pages; addendum: Switzman — 1 page; dissent: Wakely. (22)

Incompetence — whether grievor's output met reasonable standards required by company; grievance dismissed. *Re Allatt Limited and International Woodworkers of America*; Figueira grievance, July 6, 1978. Majority: Rayner, Wakely — 10 pages; dissent: Smiley. (23)

Insubordination: grievor refusing to obey direct and reasonable order and subsequently leaving plant without permission; grievance dismissed. *Re Rubbermaid (Canada) Limited and United Automobile Workers*; Clarke grievance, July 7, 1978. Brown — 14 pages. (24)

Insubordination: grievor subsequently changing his mind and agreeing to do work; suspension substituted. *Re Atlas Steels, A Division of Rio Algom Limited and Canadian Steelworkers Union, Atlas Division*; Crandall grievance, June 22, 1978. Majority: O'Shea, Simpson — 20 pages; partial dissent: Clawson — 1 page. (25)

Discipline

Absence without leave — failure to report absence: whether grievor aware of company rules; grievance dismissed. *Re City of Toronto, The Corporation of and Toronto Civic Employees Union, Local 43, Canadian Union of Public Employees*; Bazkur grievance, July 21, 1978. Majority: Brent, Dinsdale — 6 pages; dissent: Tate — 2 pages. (26)

Carelessness — grievor's decision to pull truck off on to shoulder of road causing long delay; standard of conduct required; grievance allowed. *Re Thibodeau-Finch Express Limited and Teamsters Union, Local 938*; Cook grievance, June 27, 1978. Majority: McLaren, Contardi — 13 pages; dissent: Peel — 2 pages. (27)

Disciplinary penalties — fines: employer may withhold wages for time not worked but cannot impose a new disciplinary practice without first notifying all employees; grievance allowed. *Re Libby, McNeill and Libby of Canada Limited and United Automobile Workers, Local 127*; Rup grievance, July 18, 1978. Linden — 10 pages. (28)

Failure to obey instructions — leaving work without following reporting procedure; grievance dismissed. *Re Dominion Stores Limited and Retail, Wholesale and Department Store Union, Local 414*; Tedesco grievance, June 30, 1978. Brown, Spaxman, White — 17 pages. (29)

Incompetence — whether grievor met standard of nursing care required; grievance allowed. *Re Toronto General Hospital and Ontario Nurses' Association*; Ahlowalia grievance, May 9, 1978. Beck, Switzman, Reeve — 15 pages; addendum: Reeve — 2 pages. (30)

Insubordination — refusal to perform outside work in cold weather: grievor failing to offer reasonable excuse; lesser suspension substituted. *Re Coca-Cola Limited and Canadian Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers*; Brett grievance, July 9, 1978. Palmer — 12 pages. (31)

Evidence

Circumstantial evidence: union official seen speaking to employees who subsequently engaged in illegal strike; whether evidence of counselling illegal strike; grievance allowed. *Re Raybestos-Manhattan (Canada) Limited and United Steelworkers of America; Lester grievance*, June 23, 1978. Palmer — 8 pages. (32)

Prior award quashed due to bias: whether admissible as record of grievor's previous testimony; evidence not admissible. *Re Heritage Nursing Home Ltd., and Service Employees Union, Local 204; Oliveira, Paulino and Ricardo grievances*, June 12, 1978. Majority: Abbott, Hamilton — 7 pages; dissent: Whittaker — 3 pages. (33)*

Grievance Procedure

Amendment of grievance: whether discussions between the parties expressly or implicitly amended grievance; grievance dismissed. *Re Atlas Steel and Canadian Steelworkers' Union, Atlas Division; Dymski grievance*, July 5, 1978. Majority: Weatherill, Gray — 8 pages; dissent: Simpson — 2 pages. (34)*

Policy grievance — individual grievance raising same issues as policy grievance; policy grievance not arbitrable. *Re Central Hospital and Ontario Nurses' Association; policy grievance*, July 6, 1978. Roberts, Richards, Poulin — 7 pages. (35)

Time limits — grievor failing to present wage grievance in time; grievance not arbitrable. *Re Dominion Stores Limited and Retail, Wholesale and Department Store Union, Local 414; Marini grievance*, June 14, 1978. Palmer — 9 pages; did not concur: White; partial dissent: Weisbach. (36)

Time limits — reasonable grounds for extension of limits: whether employer will be prejudiced by extension; grievance arbitrable. *Re The Becker Milk Company Limited and Teamsters, Local 647; Oakley grievance*, July 12, 1978. Burkett — 11 pages. (37)*

Holiday Pay

Entitlement — grievors scheduled to work on statutory holiday sick on that day only; grievance allowed. *Re The Hamilton Street Railway Company and Amalgamated Transit Union, Division 107; Novak and Giordano grievances*, July 20, 1978. Majority: Weatherill, Switzman — 8 pages; dissent: Hamilton — 1 page. (38)*

Entitlement — qualifying days: grievors receiving Workmen's Compensation benefits during scheduled shift before holiday; grievances dismissed. *Re The Lake of the Woods District Hospital and Canadian Union of Public Employees, Local 1781; McLaughlin, Carnegie and van de Wettring grievances*, July 6, 1978. Lunney, Simpson, O'Flaherty — 6 pages. (39)

Hours of Work

Grievors requesting paid lunch period when scheduled for full work hours and paid accordingly: whether they worked full hours or not; grievance dismissed. *Re Decor Metal Products and United Automobile Workers, Local 1411; policy grievance*, July 17, 1978. Brown — 12 pages. (40)

Incentive Pay

Rate changes — changes permissible only when change in method of operation or product content occurs; grievance allowed. *Re Simmons Limited and United Electrical, Radio and Machine Workers of America, Local 513; group grievance*, July 15, 1978. Majority: Rayner, Lucas — 5 pages; dissent: Grossman — 7 pages. (41)

Interpretation

"Evaluation board" — scope of authority to assess candidates for promotion; grievance dismissed. *Re City of Cambridge, The Corporation of and The Cambridge Professional Firefighters' Association, Local 499; union grievance*, July 17, 1978. Beck — 11 pages. (42)

Lay-Off

Bumping rights: entitlement to regular rate of pay while performing work of lower classification after exercising seniority rights; grievance dismissed. *Re Sealed Power Corporation of Canada Limited and United Automobile Workers, Local 569; union grievance*, July 24, 1978. Weatherill — 6 pages. (43)

Lock-Out

Declaration of illegal lock-out by Labour Relations Board; grievance allowed. *Re Harry Woods Transport Limited and Teamsters Union, Local 141*; group grievance, July 17, 1978. Majority: Weatherill, Kobryn — 7 pages; dissent: Stringer — 4 pages. (44)

Overtime

Assignment of overtime: company assigning work temporarily to extra workers on regular time rather than saving work to be performed by regular workers on overtime basis; whether overtime exists in such circumstances; grievance dismissed. *Re Redpath Sugars Limited and International Chemical Workers Union, Local 688*; Campbell grievance, June 10, 1978. Palmer, Crozier, Payette — 8 pages. (45)

Distribution — employees not at work when overtime offered claiming right to notice by phone and overtime assignment; grievance dismissed. *Re The Budd Automotive Company of Canada Limited and United Automobile Workers, Local 1451*; Werner and Barbara grievances, June 19, 1978. O'Shea — 9 pages. (46)

Distribution — overtime work to be assigned to employees with lowest overtime hours: whether procedure applies when employees cannot be recruited from department in which work is available; grievance allowed. *Re The Budd Automotive Company of Canada Limited and United Automobile Workers, Local 1451*; policy grievance, July 10, 1978. Weatherill — 8 pages. (47)*

Entitlement: collective agreement silent concerning allocation of overtime; grievance dismissed. *Re City of Waterloo, The Corporation of and Waterloo Civic Employees Union, Local 1542, Canadian Union of Public Employees*; Dorsch grievance, June 29, 1978. Hinnegan, Maddison, Noble — 5 pages. (48)

Probationary Employee

Probation period — calculation: whether authorized absence of grievor included in probationary period; grievance allowed. *Re Toronto Star and Toronto Newspaper Guild; Advani grievance*, June 19, 1978. Majority: Teplitsky, Tate — 7 pages; dissent: Earle — 5 pages. (49)

Procedure

Discovery of documents — jurisdiction of arbitrator to order discovery: order for discovery refused. *Re Canadian Broadcasting Corporation and Canadian Union of Public Employees, Broadcast Division*; Jones grievance, July 9, 1978. Preliminary award. Adams — 12 pages. (50)*

Promotion

Entitlement to training period: scope of arbitral review of management evaluation of skill and ability; grievance dismissed. *Re Black Diamond Cheese, Div. of Brooke Bond Foods Limited and Canadian Food and Allied Workers, Local P-688*; McDonnell grievance, June 29, 1978. Majority: Kennedy, Wakely — 16 pages; dissent: Zimmerman. (51)

Recall

Skill and ability: employees recalled according to a performance evaluation based on improper criteria rather than seniority; grievance allowed. *Re The Becker Milk Company Limited and Milk and Bread Drivers, Dairy Employees, Caterers and Allied Workers, Local 647*; Ayles grievance, July 12, 1978. McLaren — 18 pages. (52)

Remedies

Reinstatement — employee unjustly discharged: effects of grievors health, qualifications and capabilities on his right to job; whether attending government retraining programme mitigation of damages; reinstatement and damages ordered. *Re United Tire and Rubber Manufacturers (Toronto) Limited and Local 973, United Rubber, Cork, Linoleum and Plastic Workers of America*; Driver grievance, June 28, 1978. O'Shea — 26 pages. (53)

Reinstatement — employee unjustly discharged: grievor having lost seniority status under collective agreement prior to a permanent vacancy occurring; grievance no longer arbitrable. *Re City of Kitchener, The Corporation of and Canadian Brotherhood of Railway, Transport and General Workers, Local 304*; Legge grievance, June 30, 1978. Majority: Brent, Storie — 4 pages; dissent: Bruder. (54)

Res Judicata

Effect of prior awards on similar issue between the same parties: whether prior awards manifestly wrong; grievance dismissed. *Re Ontario Hydro and Canadian Union of Public Employees, C.L.C., Ontario Hydro Employees: Union, Local 1000*; union grievance, July 10, 1978. Majority: McCamus, Hamilton — 28 pages; dissent: Goudge — 6 pages. (55)*

Grievance identical to previous grievance which was either settled or abandoned; grievance not arbitrable. *Re Lancia Bravo Foods Limited and Canadian Food and Allied Workers*; Andreanna grievance, June 16, 1978. Majority: Egan, Billings — 9 pages; dissent: Fagan — 2 pages; addendum: Billings — 1 page. (56)

Scheduling of Work

Shifts — employer deciding to convert to shift work instead of having employees working only days; whether prohibited by agreement; grievance dismissed. *Re Borough of North York, The Corporation of and Canadian Union of Public Employees, Local 94; policy grievance, July 5, 1978.* Beck — 6 pages. (57)

Start and finish times unilaterally changed: whether a violation of the hours of work provision of the agreement; grievance dismissed. *Re Newmarket Extended Care and Convalescent Centre and Canadian Union of Public Employees, Local 2040; union grievance, July 24, 1978.* Dunn — 3 pages. (58)

Seniority

Effective date — grievor moving from part-time to full-time status: whether employer bound by statements to grievor concerning his seniority date; grievance allowed. *Re Dominion Stores Limited and Retail, Wholesale and Department Store Union — see (36), supra.* (59)

Employee waiver of seniority rights for promotion: new position created; whether waiver applies to new position; grievance dismissed. *Re American Can of Canada Limited and United Paperworkers International Union, Local 548; group grievance, June 27, 1978.* Fox — 6 pages. (60)

Seniority lists — merger of non-unionized and unionized workers resulting in retention by non-union members of their seniority with the company; grievance dismissed. *Re CVI Paints and United Steelworkers of America; Allen grievance, July 19, 1978.* Bigelow, Gerard, Werry — 6 pages. (61)

Seniority lists: seniority based on departmental and occupational groups: whether employer may freely change those groups; management rights explained. *Re Atlific Restaurants Limited and The Hotel and Restaurant Employees' and Bartenders' International Union, Locals 254, 280 and 299; group and union grievances, June 30, 1978.* Majority: Baum, Tate — 14 pages; dissent: Ronson — 1 page; concurring statement: Tate — 1 page. (62)

Sick Pay

Deduction of four hours pay for failure to report illness: whether deduction was disciplinary; grievance allowed. *Re City of Toronto and Metropolitan Toronto Civic Employees Union, Local 43 of Canadian Union of Public Employees; Hayes grievance, June 12, 1978.* Majority: McCulloch, Tate — 13 pages; dissent: Dinsdale. (63)

Entitlement: grievor claiming benefits for accident occurring on National Day of Protest; whether disqualified by collective agreement per exemption during work stoppages; grievance dismissed. *Re International Harvester Company of Canada Limited and United Steelworkers of America, Local 2868; Rykman grievance, May 12, 1978.* Majority: Linden, McKillop — 6 pages; dissent: McMillan. (64)

Grievors ill during scheduled shutdown and requesting rescheduled vacations and sickness indemnity; grievances dismissed. *Re Reynolds Extrusion Company Limited and United Steelworkers of America, Local 8412; group grievance, June 30, 1978.* Majority: Schiff, Whittaker — 6 pages; dissent: Grasso — 7 pages. (65)

Grievor off sick during his scheduled vacation and requesting sick pay for this time as well as vacation pay rather than rescheduling his vacation; grievance allowed. *Re The Ontario-Minnesota Pulp and Paper Company Limited, Fort Frances Division and United Paperworkers International Union, Local 92; Ossachuk grievance, July 19, 1978.* Brown — 17 pages. (66)

Personal problems causing grievor's absence due to mental distress: whether an illness; grievance dismissed. *Re Dominion Stores Limited and Retail, Wholesale and Department Store Union, Local 414; Thomson grievance, July 8, 1978.* Majority: Brown, White — 9 pages; dissent: Barron — 1 page. (67)

Proof of illness — employer asking that detailed medical report be submitted for grievor's short-term illness; whether appropriate; grievance allowed in part. *Re Central Hospital and Ontario Nurses' Association; Rocha grievance, July 6, 1978.* Majority: Roberts, Richards — 15 pages; dissent: Paulin — 7 pages. (68)

Strike

National Day of Protest: whether constituted a strike according to the collective agreement; grievance allowed. *Re Inco Limited and United Steelworkers of America; company grievance, July 4, 1978.* Majority: Weatherill, Riggin — 15 pages; dissent: Keck. (69)

Transfer

Grievor being asked to perform work formerly done by employees in different classification: whether such work fell within grievor's classification; grievance allowed. *Re Sheldons Engineering Limited and United Steelworkers of America, Local 2931; McMullen grievance, June 29, 1978.* Palmer, Payette, Wadden — 5 pages. (70)

Vacation Pay

Calculation — whether vacation benefits accrue during lay-off; grievance dismissed. *Re Domtar Fine Papers Limited, Cornwall Mill and Office and Professional Employees International Union, Local 418; union grievance, July 24, 1978.* Majority: Curtis, Byers — 8 pages; dissent: Rousseau — 1 page. (71)

Grievor off sick during his scheduled vacation and requesting sick pay for this time as well as vacation pay rather than rescheduling his vacation; grievance allowed. *Re The Ontario-Minnesota Pulp and Paper Company Limited, Fort Frances Division and United Paperworkers International Union* — see (66), *supra*. (72)

Vacations

Entitlement — whether part-time employment counts as continuous service within collective agreement; grievance dismissed. *Re St. Catharines General Hospital and Ontario Nurses' Association; Johnston grievance*, July 4, 1978. Majority: Beck, Stewart — 6 pages; dissent: Done. (73)*

Grievors ill during scheduled shutdown and requesting rescheduled vacations and sickness indemnity; grievances dismissed. *Re Reynolds Extrusion Company Limited and United Steelworkers of America* — see (65), *supra*. (74)

Scheduling: non bargaining unit management personnel asserting priority; grievance allowed. *Re The Hydro Electric Commission of the Corporation of the Borough of North York and Canadian Union of Public Employees, Local 11; Workman grievance*, July 19, 1978. Dunn, Millage, Chatland — 4 pages. (75)

Welfare Plans

Company failure to contribute to pension and welfare fund and to remit union dues: grievance allowed. *Re Mercier Painting and Allied Trades Local 1671; Blanco grievance*. July 20, 1978. Aggarwal, Elwert, Humenecky — 6 pages. (76)

Payment of OHIP premiums — employer refusing to pay premiums for employees who worked substantially all of one month and then laid off at end of month; grievance allowed. *Re Decor Metal Products and United Automobile Workers, Local 1411; policy grievance*, July 10, 1978. Weatherill — 8 pages. (77)

Supplementary unemployment benefit: whether calculated on wage rates after addition of cost-of-living adjustment; grievance dismissed. *Re Crown Cork and Seal Company, Limited and Crown Cork and Seal Employees' Association; policy grievance*, July 10, 1978. Majority: Weatherill, Murray — 6 pages; dissent: Trower — 2 pages. (78)

Work Assignment

Bargaining unit work — volunteers allegedly doing social work: full-time employees laid off; grievance dismissed. *Re Big Brothers of Metropolitan Toronto and Canadian Union of Public Employees, Local 1717; Stephen, Sharma and union grievances*, July 4, 1978. Majority: Hinnegan, Stringer — 12 pages; dissent: Acton — 2 pages. (79)

Employer creating new department not covered by collective agreement: whether employees in new department performing substantially same work as was formerly done by bargaining unit employees; grievance dismissed. *Re The Ottawa Citizen and The Ottawa Newspaper Guild, Local 205; policy grievance*, July 11, 1978. Majority: Hinnegan, McNaughton — 12 pages; dissent: Emond. (80)

Supervisors assigned re-alignment and renovation work: whether bargaining unit work; grievance dismissed. *Re Dominion Stores Limited and Retail, Wholesale and Department Store Union; Noble grievances*, July 15, 1978. Majority: Curtis, Tarasuk — 7 pages; dissent: Barron — 1 page. (81)

Monthly Bulletin

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The following awards in interest arbitrations under The Hospital Labour Disputes Arbitration Act were also filed with the Commission during the month of July, 1978.

Nel-Gor Castle Nursing Home and London and District Service Workers' Union, Local 220, S.E.I.U., Betcherman — 9 pages; addendum: Sargeant — 1 page; partial dissent: Switzman — 2 pages.

The Smith Falls Community Hospital and Ontario Nurses' Association, (full-time and part-time units), Brown, Walsh, Dixon — 38 pages.

The White Eagle Nursing Homes Limited and Service Employees Union, Local 204, affiliated with A.F.L., C.I.O., CLC, Ord, Noonan, Wren — 7 pages.

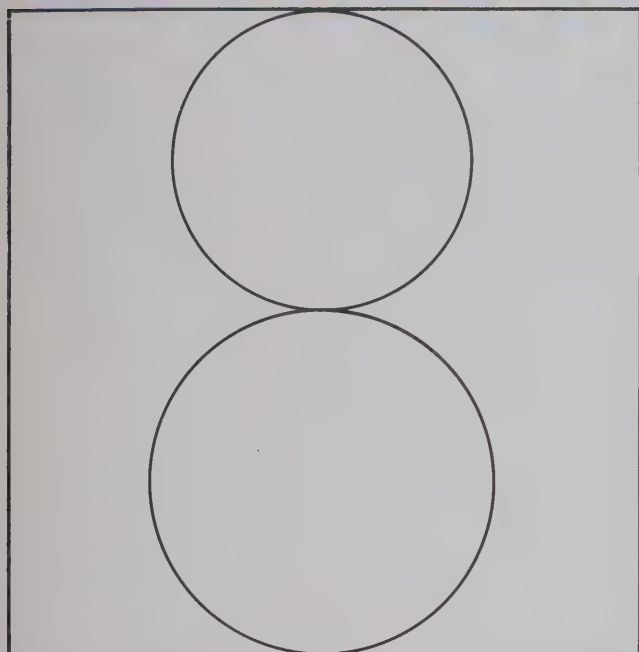
The awards may be seen at the office of the Commission, 400 University Avenue, 14th floor, Toronto. Copies of awards may be obtained for a fee of 50 cents per page. Orders will be filled on receipt of an application and a cheque or money order payable to the Treasurer of Ontario for the applicable amount, which should be forwarded to: Cashier's Office, Ministry of Labour, 400 University Avenue, Toronto, Ontario M7A 1V6.

Filing Awards

The attention of chairmen of boards of arbitration and sole arbitrators is drawn to the provision of Section 6(2) of the Regulation, which reads: 6.—(2) Every arbitrator shall, within ten days of issuing an award, file a copy thereof with the Commission. This provision would apply to all arbitrators approved under The Ontario Labour-Management Arbitration Commission Act and regardless of whether they were appointed as chairmen or sole arbitrators pursuant to the Act, by the parties or by the Minister.

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Monthly Bulletin



The Ontario Labour-Management
Arbitration Commission

His Honour Judge Walter Little, Chairman
Dorothy M. Johnson, Registrar

Ontario Ministry of Labour
400 University Avenue, 14th Floor
Toronto, Ontario
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Hon. Robert Elgie, M.D., Minister
T.E. Armstrong, QC, Deputy Minister

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by the Commission as a service to persons
involved in labour-management
arbitrations.

Arbitrators

The qualifications of the following persons are such that they meet the criteria laid down by the Commission, making them suitable persons to sit as sole arbitrators or chairmen of boards of arbitration, except that the criterion of mutual acceptability to unions and management has not been fully demonstrated. Although they may have had arbitration experience, they have not been mutually agreed upon a sufficient number of times in the past to enable them to be accredited for inclusion on panels. As soon as they meet this criterion they will be considered for full accreditation.

Miss Jane Devlin, Messrs. Pomerant and Devlin,
Barristers and Solicitors, Box 36, First Canadian Place,
Toronto, Ontario, M5X 1A9; telephone (416) 868-0080.

Patrick Roger Carriere, Public Service Staff Relations
Board, P.O. Box 1525, Station 'B', Ottawa, Ontario,
K1P 5V2; telephone (613) 995-0019.

Change of Telephone Number

The following change should be noted, effective immediately:

Professor R.D. Abbott, telephone (613) 231-7540.

Awards

The following awards were filed with the Commission during the month of August, 1978, under Section 6(2) of Ontario Regulation 635, R.R.O. 1970.

The summary was prepared at the Faculty of Law, Queen's University, under the supervision of C.G. Simmons, B.A., B.C.L., LL.M., and K.P. Swan, B.Eng., LL.M.

* Indicates award to be reported in full or in part in *Labour Arbitration Cases*.

Arbitrability

Discharge grievance of casual employee — agreement specifically excluding casual employees from those employees who may grieve; effect of section 37(1) of the *Labour Relations Act*; grievance not arbitrable. *Re Borough of North York, The Corporation of and Canadian Union of Public Employees, Local 94; Burns grievance*, July 25, 1978. Beck — 14 pages. (1)

Group grievance — union failing to follow proper steps for processing of grievance on behalf of a group of employees; grievance not arbitrable. *Re Owen Sound Transportation Company and Seafarers' International Union*; group grievance, May 14, 1978. O'Connor — 15 pages. (2)

Sick pay — voluntary sick pay scheme not a part of collective agreement; grievance not arbitrable. *Re The Scarborough Centenary Hospital Association and Canadian Union of Public Employees, Local 1320; Bernard grievance*, August 17, 1978. Hinnegan, Acton, Piroth — 7 pages. (3)

Bargaining Unit

Non-bargaining unit employees temporarily performing bargaining unit work as security guards: whether employees subject to collective agreement; whether compensation payable; grievance allowed in part. *Re International Nickel Company of Canada, Limited and Canadian Guards Association, Local 105; policy grievance*, August 9, 1978. Rayner, McVey, Sanderson — 9 pages; addendum: Sanderson — 1 page. (4)

Performance of work — employer deciding that non-bargaining unit personnel would assist passengers in "preboarding" at specified times: whether such work reserved to bargaining unit employees; grievance allowed. *Re Air Canada and Canadian Air Line Employees' Association; policy grievance*, August 1, 1978. Burkett — 10 pages. (5)

Call-In Pay

Entitlement — employer alleging officers entitled to call-back pay only if advance notice of call-back not given; grievance allowed. *Re The Board of Commissioners of Police for the City of Peterborough and The Peterborough Police Association; union grievance*, August 11, 1978. Samuels — 13 pages. (6)

Entitlement — grievors called to work one and a half hours overtime prior to shift: whether entitled to option of four hours call-in pay; grievance allowed. *Re Bonar and Bemis Limited and United Steelworkers of America, Local 8401; group grievance*, August 29, 1978. Kennedy — 11 pages. (7)

Classification

Grievor claiming higher-rate for performing certain duties — whether work within normal classification; grievance dismissed. *Re Falconbridge Nickel Mines Limited and Sudbury Mine, Mill and Smelter Workers' Union, Local 598; Hanson and Simard grievances*, July 26, 1978. Palmer — 12 pages. (8)

Qualifications — school board unilaterally amending category placement standards relied on by the union: grievance allowed. *Re The Board of Education for the Borough of York and The Borough of York Women Teachers' Association and The Ontario Public School Men Teachers' Federation, York Borough; union grievance*, August 14, 1978. Majority: Beck, Koskie — 11 pages; dissent: Mathews — 2 pages. (9)

Collective Agreement

Retroactivity — whether employee permitted benefit of retroactive vacation entitlement provisions where employment terminated prior to signing of agreement; grievance allowed. *Re The Borough of North York, The Corporation of and Canadian Union of Public Employees, Local 94; Lyons grievance*, July 25, 1978. Beck — 7 pages. (10)*

Contracting Out

Work previously performed by bargaining unit unnecessary because component parts purchased in more complete form: no evidence that lay-off direct result of contracting out; grievance dismissed. *Re Canadian Appliance Manufacturing Company Limited and United Steelworkers of America, Local 3129, union grievance*, July 4, 1978. O'Shea — 12 pages. (11)

Cost of Living Allowance

Calculation — COLA provisions based on Consumer Price Index: when COLA bonus triggered and when payable; grievance allowed in part. *Re Metropolitan Toronto Zoological Society and Canadian Union of Public Employees, Local 1600; policy grievance*, July 26, 1978. Baum — 8 pages. (12)

Damages

Unjust demotion — suspension substituted for demotion and parties unable to agree on compensation: grievor claiming right to overtime pay which would have been received in absence of demotion; grievance allowed in part. *Re City of Timmins, The Corporation of and Canadian Union of Public Employees Local 210; Picard grievance*, July 25, 1978. Supplementary award. Majority: Dunn, DeGurse — 4 pages, dissent: Noble — 3 pages. (13)

Unjust discharge — employer alleging grievor failed to properly mitigate her losses: damages calculated. *Re Scarborough General Hospital and Ontario Nurses' Association, Local 111; Chug grievance*, August 23, 1978. Majority: Brown, Walsh — 24 pages; dissent: Whittaker — 6 pages. (14).

Unjust discharge — parties disagreeing about time period and criteria for payment of compensation: effect of receipt by grievor of Workmen's Compensation Benefits at relevant period; compensation settled. *Re ESB Canada Limited and International Union of Electrical, Radio and Machine Workers; Fagundes grievance*, July, 1978. Supplementary award. Majority: Rayner, Aslin — 12 pages; dissent: Morley — 3 pages. (15)

Unjust discharge — whether grievor entitled to overtime pay for overtime work opportunities lost: whether pay likely lost through absenteeism may be deducted; damages calculated. *Re Fabricated Steel Products (Windsor) Limited and United Automobile Workers, Local 195; Colombe and Fryer grievances*, August 14, 1978. O'Shea — 10 pages. (16)

Discharge

Absence without leave — grievor left work early before a holiday and reported a day late afterwards: offences treated as separate and cumulative; reinstatement without compensation. *Re Cae Fiberglass Products Limited and International Association of Machinists and Aerospace Workers, Local 1236; Dubreuil grievance*, August 11, 1978. O'Shea — 14 pages. (17)

Absenteeism — employer overstating case in terms of actual record: absenteeism unlikely to persist in the future; suspension substituted. *Re Torin Manufacturing (Canada) Limited and United Automobile Workers; Smith grievance*, July 24, 1978. Palmer — 10 pages. (18)

Absenteeism: penalty as culmination of progressive discipline; onus on employee to establish cause of absenteeism; grievance dismissed. *Re Cyanamid of Canada Limited and Local 21, Canadian Chemical Worker's Union; Hicks grievance*, July 24, 1978. Majority: O'Shea, Morley, — 12 pages; dissent: Pratt. (19)

Alteration of grounds — employer learning of loss of trust and confidence in grievor by her co-workers after suspending grievor for carelessness; discharge imposed subsequently; grievance allowed. *Re Plummer Memorial Public Hospital and Ontario Nurses' Association; Yukick grievance*, June 26, 1978. Abbott, Switzman, Harnden — 76 pages; addendum: Harnden — 10 pages. (20)

Assault — assault by grievor upon a supervisor: self defence claim successfully proved; grievance allowed. *Re Sunnybrook Hospital and Service Employees Union, Local 777; Reid grievance*, August 22, 1978. Majority: Picher, Wren — 8 pages; dissent: Simpson — 4 pages. (21)

Carelessness — accident with oil products loading equipment: second similar incident in which grievor's memory lapse caused damage and danger; reinstatement without compensation. *Re Gulf Oil Canada Limited and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 880; Thompson grievance*, August 24, 1978. Majority: O'Shea, Kobryn — 11 pages; dissent: Murray — 1 page. (22)

Drinking on the job: plant rule prohibiting possession of alcohol on company property; grievor consuming one bottle of beer in car parked on company lot during unpaid lunch break; suspension substituted. *Re Great Atlantic and Pacific Company of Canada and Retail, Wholesale and Department Store Union, Local 414; Beagan grievance*, August 22, 1978. Majority: Burkett, Spaxman — 14 pages; dissent: Sanderson — 2 pages. (23)*

Fighting in the plant: different penalties assigned to participants; suspension substituted. *Re Cabot Carbon of Canada Limited and Oil, Chemical and Atomic Workers International Union, Local 9-14; Wilson grievance*, July 24, 1978. Hinnegan — 8 pages; partial dissent: McNaughton — 4 pages; dissent: Rogers — 2 pages. (24)

Grievors alleged to have encouraged work slowdown: Doherty grievance allowed; other grievances dismissed. *Re Westinghouse Canada Limited, Atomic Power Division, Port Hope, Ontario and United Steelworkers of America, Local 14193; Colbary, Jarvis, Doherty grievances*, August 23, 1978. Majority: Hinnegan, Kacur — 15 pages; dissent: Grills — 3 pages; appendix — 6 pages. (25)

Illegal strike — union officials leading strike: effect of belief that strike was legal; equality of treatment with others involved; suspension substituted. *Re Canada Packers Limited and Canadian Food and Allied Workers, Local P114; Van Eenooghe and Mair grievances*, June 12, 1978. Majority: Ord, Walsh — 31 pages; addendum: Walsh — 2 pages; dissent: Williamson — 11 pages. (26)

Improper conduct as nursing assistant — grievor becoming frustrated with elderly patient and treating her roughly; suspension substituted. *Re The Board of Governors of the Riverdale Hospital and Canadian Union of Public Employees, Local 79; Gordon grievance*, July 28, 1978. Brunner, Gray, Tate — 15 pages; addendum: Gray — 2 pages. (27)

Inability to satisfactorily perform duties — grievor a newly hired but experienced copy editor: work judged sloppy by employer; grievance dismissed. *Re The Globe and Mail Limited and Toronto Newspaper Guild; McRandall grievance*, August 25, 1978. Majority: Brent, Scott — 16 pages; dissent: Tate — 5 pages; addendum: Tate — 1 page. (28)

Innocent absenteeism: reinstatement without compensation with eight month probationary period imposed. *Re The Windsor Bumper Division Gulf Western Limited and United Automobile Workers, Local 195; Tomasevic grievance*, August 30, 1978. McCulloch — 11 pages. (29)

Insubordination: failure to perform work in proper manner; effects of provocation and conflicting company evidence; suspension substituted. *Re Purolator Limited and United Automobile Workers of America; Cosini grievance*, July 26, 1978. O'Shea — 14 pages. (30)

Insubordination: grievor refusing to accept letter of discipline and refusing to report to supervisor's office; grievance dismissed. *Re Mount Sinai Hospital and Service Employees' Union; Wright grievance*, August 16, 1978. Majority: Picher, Phelps — 12 pages; dissent: Wren — 2 pages. (31)

Intoxication — employer presenting circumstantial evidence to indicate that grievor was unfit to drive bus because of drinking: grievor offering explanation; reinstatement with compensation. *Re The Public Utility Commission of The City of Stratford and International Brotherhood of Electrical Workers, Local 636; Bernard Grievance*, July 31, 1978. Majority: Adams, Pretty — 19 pages; dissent: King — 3 pages. (32)

Lateness: failure of progressive discipline to bring about change in grievor's attitude and conduct; grievance dismissed. *Re Rowntree MacKintosh Canada Limited and Retail, Wholesale, Baker and Confectionery Workers Union, Local 461; Lunt grievance*, August 25, 1978. O'Shea, Reekie, Byers — 19 pages. (33)

Physical incapacity — grievor suffering heart attack: employer rule that truck drivers may not have history of heart trouble; whether employer's rule reasonable with respect to risks presented by grievor's condition; reinstatement conditional on regular medical examinations. *Re Kingsway Transports Limited and Teamsters Union, Local 879; Staley grievance*, August 4, 1978. Majority: Ellis, Hurd — 32 pages; dissent: Mitchnick — 8 pages. (34)*

Procedural requirement — employer failing to follow provisions of agreement requiring "thorough review" before imposition of discipline; grievance allowed. *Re Canadian National Railway Company and Canadian Telecommunications Division of the Canadian Brotherhood of Railway, Transport and General Workers; Allen grievance*, August 18, 1978. Majority: Burkett, Walsh — 14 pages; dissent: Dinsdale — 7 pages. (35)

Procedural requirements — union received notice of grievor's discharge during the 24 hours after his dismissal, whereas agreement called for prior notice: grievance allowed. *Re Brazeau Transport Inc. and Teamsters Union, Local 938; Daviau grievance*, August 29, 1978. Kennedy, MacLeod, Hayes — 12 pages. (36)

Quit alleged — grievor failing to return from leave of absence: grievor offering satisfactory reasons for such failure; reinstatement without compensation. *Re Caterpillar of Canada Ltd. and United Automobile Workers of America, Local 252; Lim grievance*, July 30, 1978. Majority: Rayner, Bonello — 6 pages; dissent: Freedman — 9 pages. (37)

Quit alleged — grievor resigning after being confronted by employer with evidence that might have warranted dismissal; grievance dismissed. *Re City of Cambridge, The Corporation of and Canadian Union of Public Employees, Local 1882; Brooks grievance*, August 2, 1978. Majority: Dunn, Noble — 2 pages; dissent: Maddison — 3 pages. (38)

Quit alleged — grievor submitting written resignation while emotionally upset: whether subjective intention and objective conduct consistent with voluntary quit; reinstatement with compensation. *Re The Ontario Secondary School Teachers' Federation and The Office and Professional Employees' International Union, Local 343; King grievance*, June 22, 1978. Majority: Devlin, Brown — 34 pages; dissent: Felker. (39)

Quit alleged — grievor telling treasurer and vice-president of company he had "no intention of returning to work": grievor failing to grieve promptly or join other employees in application under s.64 of *Labour Relations Act*; grievance dismissed. *Re The Becker Milk Company Limited and Teamsters, Local 647; Oakley grievance*, August 23, 1978. Burkett — 11 pages. (40)

Sale of Business — employee terminated since purchaser had own employees: subsequent determination that successor employer bound by collective agreement; agreement providing that equipment to be operated only by union members; grievance allowed. *Re Stinson Theatres (Barrie) Limited and Toronto Motion Picture Projectionists Union, Local 173; Tordiff grievance*, August 24, 1978. Majority: O'Shea, Levinson — 17 pages; dissent: Salz — 2 pages. (41)

Sleeping on the job and violation of safety regulations: conflicting evidence; effect of past disciplinary record and attitude; suspension and six month probation period substituted. *Re Inco Metals and United Steelworkers of America; King grievance*, August 2, 1978. Simmons, Gerard, Baber — 11 pages. (42)

Theft — alleged theft of company property: intention to steal not established but grievor found careless; reinstatement without compensation. *Re Pepsi-Cola Canada Limited and Soft Drink Workers Joint Executive Board; Kennedy grievance*, July 28, 1978. Majority: Rayner, Green — 9 pages; dissent: Tarasuk — 9 pages. (43)

Theft — burden of proof when criminal act alleged; grievance dismissed. *Re Thames Valley Beverages Limited and Soft Drink Workers Joint Local Executive Board; Brown grievance*, undated award. Majority: Beck, Mitchnick — 20 pages; dissent: Green — 1 page. (44)

Use of drugs on job — grievor caught using marijuana during lunch break in violation of previously unenforced plant rule; reinstatement without compensation. *Re The Great Atlantic and Pacific Company and Retail, Wholesale and Department Store Union; O'Brien grievance*, July 13, 1978. Majority: Egan, Spaxman — 8 pages; dissent: Dinsdale — 5 pages. (45)

Discipline

Absence from work — grievor failing to notify employer of her absence due to illness: grievor not advised of practice of contacting supervisor in event of absence; grievance allowed. *Re Dominion Stores Limited and Retail, Wholesale and Department Store Union, Local 414; Denicola grievance*, July 31, 1978. Majority: Brown, Dahmer — 10 pages; dissent: White — 2 pages. (46)

Absence from work station — grievor found with other employees in staff room with nobody on duty: whether grievor on break; whether aware of policy that one employee should always be on duty; grievance allowed. *Re The Borough of North York, The Corporation of and Canadian Union of Public Employees, Local 94; Vieno grievance* — see (1), *supra*. (47)

Carelessness: grievor driving truck recklessly and causing accident; grievance dismissed. *Re International Harvester Company of Canada Limited, Chatham, Ontario and United Automobile Workers of America, Local 127; Evans grievance*, August 2, 1978. O'Connor — 5 pages. (48)

Carelessness — grievor over-medicating patient: grievor's handling of narcotic drugs unsatisfactory in other instances; grievance dismissed. *Re Plummer Memorial Public Hospital and Ontario Nurses' Association*. see (20), *supra*. (49)

Carelessness — grievor unable to offer explanation for serious accident with double trailer truck: whether employer established error on part of grievor; grievance allowed. *Re Kwikasair Limited and Teamsters Union, Local 938, Murphy grievance*, July 19, 1978. Majority: McLaren, Marinelli — 14 pages; dissent: McGuire. (50)

Damaging company property: grievor inserting wire into lock on foreman's office door so as to disable lock; grievance dismissed. *Re Rockwell International of Canada Ltd. and United Automobile Workers of America, Local 1067; Ramsay grievance*, July 21, 1978. Rayner — 8 pages. (51)

Failure to follow rules: grievor leaving patient during feeding period; whether employer made decision on basis of all relevant facts; grievance allowed. *Re Sisters of St. Joseph Diocese of Peterborough Operating St. Joseph's Hospital, Parry Sound and Canadian Union of Public Employees, Local 1473; Campbell grievance*, July 15, 1978. Majority: Fraser, Tester — 16 pages; dissent: Murray. (52)

Failure to report for work as ordered on statutory holiday: employer reverting from staffing holidays from voluntary to compulsory basis as per collective agreement; whether contravention of *Employment Standards Act, 1974*; grievance dismissed. *Re The Great Atlantic and Pacific Company Limited and Retail, Wholesale and Department Store Union, Local 414; Sendell grievance*, August 2, 1978. Majority: Curtis, Whittaker — 10 pages; dissent: Spaxman — 2 pages. (53)

Fighting and failing to follow instructions: grievor's suspension longer than aggressor's; effect of prior suspension for refusing to comply with supervisor's orders; lesser suspension substituted. *Re Municipality of Metropolitan Toronto and Canadian Union of Public Employees, Toronto Civic Employees Union, Local 43, Sequillion grievance*, August 1, 1978. Ellis, Tate, Murray — 9 pages; addendum: Tate — 2 pages. (54)

Grievor alleged to have circulated literature defaming personnel director: grievor making statements in his capacity as union leader and not as employee; lesser suspension and requirement to apologize substituted. *Re City of London, The Corporation of and London Civic Employees, Local 107; Lucas grievance*, August 18, 1978. Majority: Kruger, Mitchnick — 12 pages; dissent: Parker — 6 pages; addendum: Mitchnick — 1 page; appendix — 5 pages. (55)*

Illegal work stoppage: employees at lumber camp refusing to work; whether grievors assumed leadership role; grievance allowed. *Re The Abitibi Paper Company Ltd. and The Lumber and Sawmill Workers' Union, Local 2995; Afonso et al grievances*, July 31, 1978. Majority: Dunn, Wren — 9 pages; dissent: Sutton — 5 pages. (56)

Insubordination: grievor refusing supervisor's order; whether result of misconduct or misunderstanding; grievance allowed. *Re Ralston Purina Company of Canada Limited and American Federation of Grain Millers International Union, Local 301; Seehaver grievance*, July 25, 1978. Linden — 17 pages. (57)

Refusal to work compulsory overtime — grievor refusing to work because of necessity of spending time making repairs to his house: whether reasonable; grievance allowed. *Re Bell Canada and Communications Workers of Canada: Barkley grievance*, August 16, 1978. Majority: Springate, Walsh — 10 pages; did not concur: Healy. (58)*

Refusal to work overtime: grievor communicating refusal to work overtime at last moment through shop steward rather than directly to foreman; grievance dismissed. *Re The Borough of North York, The Corporation of and Canadian Union of Public Employees, Local 94; Hughes grievance*, July 24, 1978. Beck — 7 pages. (59)

Evidence

Extrinsic evidence — whether ambiguity exists allowing admission of extrinsic evidence: evidence admissible. *Re The Board of Education for the Borough of York and The Borough of York Women Teachers' Association and The Ontario Public School Men Teachers' Federation, York Borough; union grievance*. see (9), *supra*. (60)

Hearsay evidence — disciplinary case based entirely on hearsay evidence: whether onus of proving just cause met; grievance allowed. *Re Hillsdale Nursing Home and Boot and Shoeworkers' Union; Montgomery grievance*, June 19, 1978. Majority: Brunner, Cooke — 10 pages; dissent: Baker — 3 pages. (61)*

Grievance Procedure

Compliance with mandatory provisions — company continually failing to meet its obligations: union asking Board to issue order directing compliance; grievance allowed. *Re Dominion Stores Limited and Retail, Wholesale and Department Store Union, Local 414; policy grievance*, July 25, 1978. Majority: Weatherill, Wynter — 8 pages; dissent: White — 3 pages. (62)

Holiday Pay

Qualifying days — grievors on temporary layoff during Christmas season claiming holiday pay; grievance dismissed. *Re Crothers Limited and United Automobile Workers, Local 124; Pallotta and Karim grievances*, August 24, 1978. Majority: Kennedy, Mitchnick — 14 pages; dissents: Cooper — 2 pages. (63)*

Holidays

Scheduling — police officers entitled to leave in lieu of statutory holidays: whether leave may be requested during peak vacation period; grievance allowed. *Re The Board of Commissioners of Police for the City of Stratford and The Stratford Police Association; policy grievance*, August 17, 1978. Brent — 8 pages. (64)

Job Posting

Qualifications — employer establishing residency requirement for applicants: whether inconsistent with other provisions of agreement; grievance allowed. *Re Canadian Pacific Limited (Telecommunications Department) and United Telegraph Workers, Local 1; policy grievance*, August 1, 1978. Schiff — 6 pages. (65)*

Vacancy — introduction of new equipment: whether an upgrading of existing jobs or a vacancy; grievance dismissed. *Re Redpath Sugars Limited and The International Chemical Workers' Union, Local 68; union grievance*, August 1, 1978. Palmer, Crozier, Payette — 7 pages. (66)

Lay-Off

Bumping rights — grievors seeking to bump up to higher classification and thereby displace junior employees: whether permitted by agreement; grievances dismissed. *Re Toronto General Hospital and Canadian Union of Public Employees, Local 2001; Guy, Andricopoulos grievances*, July 31, 1978. Majority: Brown, Gorchinsky — 25 pages. dissent: Acton — 3 pages. (67)*

Bumping rights — mechanics re-assigned to perform helpers' duties at helpers' pay: whether seniority and ability properly balanced by employer; grievances dismissed. *Re National Elevator and Escalator Association and International Union of Elevator Constructors; group grievances*, August 17, 1978. O'Shea — 14 pages. (68)

Seniority — senior employee laid off because of lack of flexibility and training aptitude; grievance dismissed. *Re Canadian General Electric Company Limited and United Electrical, Radio and Machine Workers, Local 524; Tapp grievance*, July 26, 1978. Majority: Beck, Byers — 12 pages; dissent: Russell — 2 pages. (69)*

Leave of Absence

Effect on fringe benefits — grievor taking frequent absences on union business; employer claiming that vacation and other benefits should be prorated to take account of such absences: grievance allowed. *Re Board of Health Muskoka-Parry Sound Health Unit and Ontario Nurses' Association; Lajchak grievance*, July 30, 1978. Beck, Symes, Vezina — 8 pages. (70)

Overtime

Assignment — grievor claiming three hours overtime because foreman did 5 minute repair normally done by grievor: grievance dismissed. *Re Kirsch of Canada Limited and United Automobile Workers, Local 636; Duivenvoorde grievance*, August 10, 1978. Rayner — 5 pages. (71)

Calculation — whether premium calculated on grievor's regular rate or on higher rate for temporary appointment; grievance allowed. *Re Eldorado Nuclear Limited and United Steelworkers of America, Local 13173; Kot grievance*, July 19, 1978. Palmer — 5 pages. (72)

Day off in lieu — employer refusing grievor's request because work backlogged: whether employer acted unreasonably; grievance dismissed. *Re Borough of North York, The Corporation of and Canadian Union of Public Employees* — see (59), *supra*. (73)

Distribution — overtime to be allocated as evenly as possible "among the employees normally performing the work": overtime assigned to employee of another department who does similar work; grievance dismissed. *Re Purolator Limited and United Automobile Workers; McQuarrie grievance*, August 25, 1978. Rayner — 5 pages. (74)

Entitlement — employer scheduling extra hour for lunch break: employees claiming overtime pay for additional hour; grievance allowed. *Re Board of Commissioners of Police for the City of Peterborough and The Peterborough Police Association* — see (6), *supra*. (75)

Entitlement — grievor normally working day shift assigned night shift for one occasion: whether this constitutes work outside normally scheduled shift hours; grievance dismissed. *Re Columbia Finishing Mills Ltd. (Cornwall, Ontario Plant) and Canadian Paperworkers Union, Local 1156; Smith grievance*, July 27, 1978. Brown — 11 pages. (76)*

Entitlement: grievors told to stay put for night when stranded during snowstorm; Jones stranded at work station with job responsibilities, others elsewhere with no responsibilities; Jones grievance allowed, other grievances dismissed. *Re Waterloo North Hydro Commission and Local 636 of International Brotherhood of Electrical Workers; Jones, Minthorne and Meininger grievances*, August 24, 1978. Majority: Rayner, Stacey — 8 pages; dissent: Heslinga — 1 page. (77)

Pyramiding — grievor working overtime between regular shifts: whether entitled to overtime pay for second regular shift where less than 16 hours between shifts; grievance allowed. *Re Laurentian Hospital and Ontario Nurses' Association, Local 27; MacLelland grievance*, June 28, 1978. Majority: Beck, Cochrane — 8 pages; dissent: Browne — 7 pages. (78)

Rate for hours on Sunday beyond a regular shift: work on Sunday paid at double time; whether agreement provides for pyramiding; grievance dismissed. *Re Toronto Star — Sunday Star and the Toronto Newspaper Guild; policy grievance*, July 23, 1978. Majority: Teplitsky, Winkler — 7 pages; dissent: Tate — 2 pages. (79)

Work on statutory holiday: grievor working 12 hours on holiday and claiming double time and one-half for all 12 hours; whether such rate only applies to first eight hours worked; grievance allowed. *Re Belleville General Hospital and Service Employees International Union, Local 183; Packman grievance*, August 3, 1978. Majority: Brunner, Burshaw — 9 pages; dissent: Pike — 1 page. (80)

Work on statutory holiday or "day celebrated in lieu thereof": relevance of practice of other employers; grievance allowed. *Re Loblaw's Limited and Canadian Food and Allied Workers and Local Union 175; union grievance*, July 25, 1978. Palmer — 9 pages. (81)

Probationary Employee

Discharge — whether discharge or lay-off of probationary employee a proper subject matter of grievance; grievances dismissed. *Re Little's Nursing Home (Tecumseh) Limited and Service Employees Union, Local 210; Renault et al grievances*, August 25, 1978. Rubenstein, Hughes, Docherty — 18 pages. (82)

Promotion

Skill and ability — senior employee with aptitude eligible for training period in which to demonstrate qualifications; grievance allowed. *Re Cochrane Enterprises Limited and Lumber and Sawmill Workers Union, Local 2995; Gill grievance*, July 26, 1978. Majority: McCulloch, Wren — 13 pages; dissent: Valin — 2 pages. (83)

Recall

Communication with employees: whether company's policy fair and reasonable; factors to be considered; grievance withdrawn. *Re Libby, McNeill and Libby of Canada Limited and The United Auto Workers Union, Local 127; Fournier grievance*, July 25, 1978. Johnston — 7 pages. (84)

Failure to respond — grievor losing seniority status because did not respond to recall: whether grievor had actual notice of recall; whether failure to respond leads to permanent loss of seniority or temporary waiver of seniority advantages; grievance allowed. *Re Couchman Trade Bindery Limited and Graphic Arts International Union, Local 28B; Lunau grievance*, July 25, 1978. Majority: Weatherill, O'Reilly — 9 pages; dissent: Smith (85)*

Order of recall — agreement providing that recall to be reverse order of lay-off: grievor recalled after employees who were laid off before him; grievance allowed. *Re De Laval Company Limited and International Association of Machinists and Aerospace Workers, Local 872; Craymer grievance*, July 27, 1978. Weatherill, Wren, Payette — 8 pages. (86)

Skill and ability — grievor not recalled as a result of performance report, the validity of which is in question; grievance allowed. *Re The Becker Milk Company Limited and Milk and Bread Drivers, Dairy Employees, Caterers and Allied Workers, Local 647; Jones grievance*, August 28, 1978. Adams — 13 pages. (87)

Scheduling of Work

Employer cancelling regular shift after employees worked 24 hours without sleep: whether employees entitled to pay for cancelled shift; grievance dismissed. *Re Regional Municipality of Peel and Local Union 636, International Brotherhood of Electrical Workers; policy grievance*, July 26, 1978. Majority: O'Shea, Houck — 11 pages; dissent: Wacheski. (88)

Seniority

Credit for previous experience: whether a distinction to be made between permanent and probationary employees; whether "length of experience in teaching" includes actual teaching hours on days under contract; grievance dismissed. *Re The Board of Education for the City of Toronto and Women Teachers Association of Toronto; group grievance*, August 1, 1978. Ellis, Posen, Cook — 16 pages; addendum: Posen — 1 page. (89)

Staffing

Teachers claiming employer improperly amended pupil-teacher ratio employer reducing number of teachers when actual enrolment lower than projections; grievance dismissed. *Re The Board of Education for the City of Windsor and The Ontario Secondary School Teachers' Federation, District One; union grievance*, July 31, 1978. Majority: Brown, Bartlet — 24 pages; dissent: Koskie. (90)

Transfer

Seniority rights — extent of management duty to ensure more senior employee is assigned temporary transfer; grievance allowed. *Re Sheldons Engineering Limited and United Steelworkers of America, Local Union 2931; McMullen grievance*, undated award. Majority: Linden, Wadden — 7 pages; dissent: Payette. (91)

Union Recognition

Association alleging Board improperly negotiating with Senior Officers Association: whether s.30(2) of *The Police Act* permits senior officers to bargain independently; grievance dismissed. *Re The Board of Commissioners of Police for the City of Peterborough and The Peterborough Police Association - see (6), supra*. (92)

Vacation Pay

Entitlement: vacations "with full pay": whether including double time for Sundays where Sundays form part of vacationing employees regular work; grievance allowed. *Re Toronto Star Limited and The Toronto Newspaper Guild Local 87; Rupke and MacDonald grievances*, June 30, 1978. Majority: Brunner, Tate — 10 pages; dissent: Winkler — 3 pages. (93)*

Vacations

Entitlement — grievor retiring on March 31: whether entitled to full or pro-rated annual vacation; grievance dismissed. *Re The Borough of North York, The Corporation of and Canadian Union of Public Employees - see (10), supra*. (94)*

Wages

Bilingual bonus — employer claiming grievor performed insufficient proportion of her work in French; grievance allowed. *Re Canadian Union of Public Employees and Office and Professional Employees International Union, Local 491; Bennett grievance*, August 15, 1978. Majority: Betcherman, Rousseau — 7 pages; dissent: Little. (95)*

Progression — denial of mid-rate increase: rate to be paid when employee "progressing satisfactorily"; grievance allowed in part. *Re International Tools (1973) Limited and Windsor Mouldmakers Union Local 1680; Lyons grievance*, August 17, 1978. Rubenstein — 7 pages. (96)

Welfare Plans

Group insurance — agreement concerning calculation of cost of insurance program — whether gross cost or gross premium minus rebate relevant; grievance allowed in part. *Re The Ottawa Board of Education and The Ontario Secondary School Teachers' Federation, District 26 and L'Association des Enseignants Franco-Ontariens, Unite Regionale 1; policy grievance*, July 14, 1978. Fraser, Morse, Laishley — 11 pages. (97)

Long term disability pay — grievor absent from work from 1975 to 1977: grievor working one month and then absent again because of same illness; whether disability pay should be based on 1977 or 1975 rate; grievance dismissed. *Re The Hamilton Harbour Commissioners and Canadian Union of Public Employees, Local 958; Didier grievance*, August 9, 1978. Majority: Hinnegan, Wace — 6 pages; dissent: Maddison. (98)

Retirement allowance — employer reducing allowance to take account of Old Age Security payments received by grievors; grievance allowed. *Re The Niagara Regional Board of Commissioners of Police and The Niagara Region Police Association; Brettell and Baker grievances*, July 20, 1978. Barton — 8 pages. (99)

Work Assignment

Assignment of job functions to another classification: no job descriptions in collective agreement; grievance dismissed. *Re Chromasco Limited and United Steelworkers of America, Local 4632; policy grievance*, August 2, 1978. Majority: O'Shea, Massicotte — 10 pages; dissent: Curry. (100)

Assignment of work allegedly outside bargaining unit — grievor asked to do emergency repair to radio station equipment outside his usual job with associated television station; grievance dismissed. *Re Cambrian Broadcasting Limited and National Association of Broadcast Employees and Technicians; Wilcox grievance*, August 24, 1978. Brunner — 13 pages. (101)

Entitlement to particular job — grievor unable to perform all work in his classification: grievor transferred from classification; grievor asking to be assigned to classification when work available which he was able to perform; grievance dismissed. *Re Simmons Limited and United Electrical, Radio and Machine Workers of America, Local 513; Mancuso grievance*, August 2, 1978. Majority: Dunn, Sanderson — 6 pages; did not concur: Bezo. (102)

Health and safety: new department created; collective agreement specifying number of employees to be assigned work on high voltage equipment; grievance dismissed. *Re The Windsor Utilities Commission and International Brotherhood of Electrical Workers, Local 636; group grievance*, July 20, 1978. Majority: Gorsky, Gress — 6 pages; dissent: Heslinga — 9 pages. (103)

Reorganization of operation — grievor's job rendered mostly unnecessary: remaining work distributed to other employees; grievance dismissed. *Re Truck Engineering Limited and United Automobile Workers, Local 636; Deadman grievance*, August 1, 1978. Majority: Palmer, Wakely — 5 pages; dissent: Cooper — 1 page. (104)

Supervisory employees — participation in semi-annual major relining of grocery store: whether "routine store work"; grievance dismissed. *Re Dominion Stores Limited and Retail, Wholesale and Department Store Union, Local 414; Stone grievance*, August 8, 1978. Majority: O'Shea, White — 14 pages; dissent: Barron. (105)

Working Conditions

Work-load — agreement providing that employees entitled to relief if overtaxed: employer laying-off some employees shortly after office became busier; whether remaining employees overtaxed; grievance allowed. *Re Canadian Pacific Limited (Telecommunications Department) and United Telegraph workers, Local 1; group grievance*, July 26, 1978. Beck — 25 pages. (106)*

The following awards in interest arbitrations under *The Hospital Labour Disputes Arbitration Act* were also filed with the Commission during the month of August, 1978:

St. Catharines General Hospital and Ontario Nurses' Association, Burkett, Walsh — 6 pages; dissent: Dixon — 3 pages.

Kemptville District Hospital and Ontario Nurses' Association (full-time and part-time), Burkett, Walsh — 12 pages; addendum: Walsh, dissent: Dixon — 2 pages.

Mount Sinai Hospital and Service Employees Union, Local 204, Kennedy, Simon, Hubert — 14 pages.

Metropolitan General Hospital of the City of Windsor and The International Brotherhood of Electrical Workers, Local Union 911, Davidson, Senay, Bartlett — 12 pages.

Walter P. Hogarth Memorial Hospital and Ontario Nurses' Association, (full-time and part-time), Interim Award: Baum, Gilman, Walsh — 12 pages.

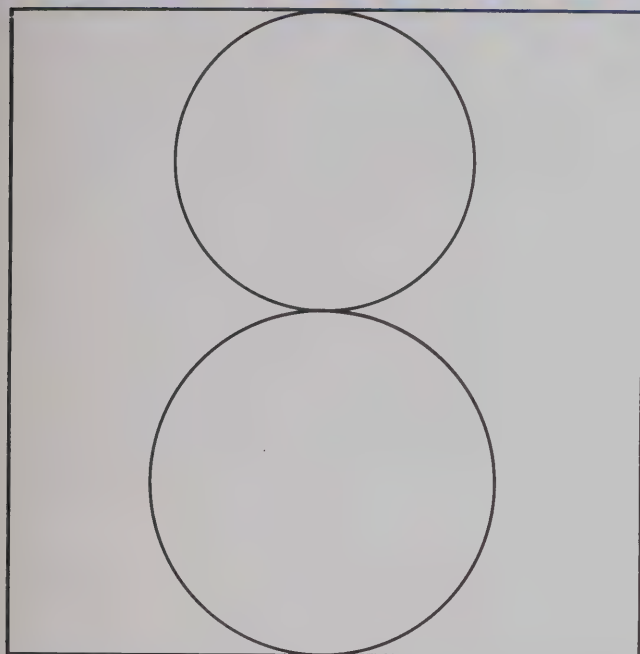
Salvation Army Grace Hospital at Windsor and Service Employees Union, Local 210 (Office and Clerical Staff), Samuels, Burnell, Hughes — 18 pages; correction: 1 page.

Filing Awards

The attention of chairmen of boards of arbitration and sole arbitrators is drawn to the provision of Section 6(2) of the Regulation, which reads: 6.—(2) Every arbitrator shall, within ten days of issuing an award, file a copy thereof with the Commission. This provision would apply to all arbitrators approved under The Ontario Labour-Management Arbitration Commission Act and regardless of whether they were appointed as chairmen or sole arbitrators pursuant to the Act, by the parties or by the Minister.

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Monthly Bulletin



The Ontario Labour-Management
Arbitration Commission

His Honour Judge Walter Little, Chairman
Dorothy M. Johnson, Registrar

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Hon. Robert Elgie, M.D., Minister
T.E. Armstrong, QC, Deputy Minister

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arbitrations.

Arbitrators

The following persons have been approved as chairmen of boards of arbitration or single arbitrators pursuant to The Ontario Labour-Management Arbitration Commission Act and Ontario Regulation 635:

Mrs. Louise Duchesneau-McLachlan, Messrs. McLachlan, Duchesneau-McLachlan & Sangster, Barristers and Solicitors, 222 McIntyre Street West, Suite 311, North Bay, Ontario, P1B 2Y8; telephone (705) 474-7500.

Dean R.W. Ianni, Q.C., Faculty of Law, University of Windsor, Windsor, Ontario, N9B 3P4; telephone (519) 253-4232.

Professor W.E. McCaughey, Faculty of Law, Common Law Section, University of Ottawa, Ottawa, Ontario, K1N 6N5; telephone (613) 231-3365 or 231-3375.

The qualifications of the following persons are such that they meet the criteria laid down by the Commission, making them suitable persons to sit as sole arbitrators or chairmen of boards of arbitration, except that the criterion of mutual acceptability to unions and management has not been fully demonstrated. Although they may have had arbitration experience, they have not been mutually agreed upon a sufficient number of times in the past to enable them to be accredited for inclusion on panels. As soon as they meet this criterion they will be considered for full accreditation.

Professor Harry J. Waisglass, McMaster University, Room 110, Commons Building, Hamilton, Ontario, L8S 4K1; telephone (416) 525-9140, extension 4692/3. (For interest disputes only)

Professor Ronald J. Delisle, Faculty of Law, Queen's University, Kingston, Ontario, K7L 3N6; telephone (613) 547-5803. (For interest disputes only)

Change of Address and Telephone Number

The following changes should be noted, effective immediately:

His Honour, Judge W.H. Fox, Q.C., 981 Colborne Street, London, Ontario, N6A 4A7; telephone (519) 672-4624.

O.J. Godin, 6 Belanger Street, Verner, Ontario, P0H 2M0; telephone (705) 594-2884.

Robert J. Wakfer, 405 Phillip Street, Waterloo, Ontario, N2L 3X2; telephone (519) 886-2320 (Specialist in Industrial Engineering).

Change of Telephone Number

Professor D. Fraser, Department of Law, Carleton University, Colonel By Drive, Ottawa, Ontario, K1S 5B6; telephone (613) 231-7540.

Awards

The following awards were filed with the Commission during the month of September, 1978, under Section 6(2) of Ontario Regulation 635, R.R.O. 1970.

The summary was prepared at the Faculty of Law, Queen's University, under the supervision of C.G. Simmons, B.A., B.C.L., LL.M., and K.P. Swan, B.Eng., LL.M.

* Indicates award to be reported in full or in part in *Labour Arbitration Cases*.

Arbitrability

Jurisdictional dispute — obligation to submit disputes relating to work assignment or jurisdiction to Impartial Jurisdictional Disputes Board under terms of collective agreement; grievance not arbitrable. *Re Dominion Bridge Company Limited and United Association of Plumbers and Pipefitters, Local 800; union grievance*, September 5, 1978. Majority: Teplitsky, Dunsmore — 4 pages; dissent: Popovich — 3 pages. (1)

Policy grievance: employer claiming "Shop Chairman" granted no rights by agreement; employer arguing second part of grievance untimely and required to be brought as individual grievance; grievance arbitrable in part. *Re McGregor Hosiery Mill Limited and Canadian Textile and Chemical Union, Local 590; policy grievance*, August 8, 1978. Interim award: Majority: Abbott, McKillop — 19 pages; dissent: Swenarchuk — 9 pages. (2)

Bargaining Unit

Operators of new equipment: whether members of bargaining unit; grievance allowed. *Re Lawson Packaging and Printing Specialties and Paper Products Union, Local 466; union grievance*, September 18, 1978. Teplitsky, Tate, Filion — 3 pages. (3)

Scope — production unit: quality control personnel; whether in production unit or office staff; grievance dismissed. *Re Diamond National of Canada Limited and International Woodworkers of America; policy grievance*, September 15, 1978. Majority: Palmer, Mathews — 6 pages; dissent: Marcantonion. (4)

Call-In Pay

Employees alleging entitlement to "call-in" bonus despite new scheduling arrangement: grievances dismissed. *Re Allied Chemical Canada Limited and United Automobile Workers, Local 89; employee grievances*, September 13, 1978. Brandt — 5 pages. (5)

Classification

Job classifications set out in collective agreement: whether employer may alter duties of an existing classification; whether alteration in work assignment changes employee's classification; grievance dismissed. *Re Canadian Car Division Hawker Siddeley Canada Limited and United Automobile Workers, Local 1075; union grievance*, September 20, 1978. Hinnegan — 14 pages. (6)

Upgrading of job classification sought: grievor alleging a material change of job assignment; grievance dismissed. *Re Allied Chemical Canada Limited and Office and Technical Workers, Local 89 of United Automobile Workers; Reaume grievance*, September 13, 1978. Brandt — 9 pages. (7)

Contracting Out

Maintenance painting sub-contracted: management assuming that production painters would not accept overtime because of heavy production schedule; grievance allowed. *Re Canadian Car Division Hawker Siddeley Canada Limited and United Automobile Workers, Local 1075; union grievance*, September 20, 1978. Hinnegan — 8 pages. (8)

Notice requirements — consultation required: disputes subject to arbitration; whether notice to shop steward sufficient; grievance allowed. *Re Rothmans of Pall Mall Canada Limited and Tobacco Workers' International Union, Local 319; union grievance*, September 25, 1978. Kruger — 8 pages. (9)

Cost of Living Allowance

Calculation — allowance for last quarter of collective agreement: union claims basis rate for new negotiations should include allowance though adjustment date falls on day after contract expires; grievance dismissed. *Re Canada Malting Company Limited and United Brewery, Flour, Cereal, Soft Drink and Distillery Workers of America, Local 304; union grievance*, September 18, 1978. Weatherill — 9 pages. (10)*

Entitlement: union claiming allowance payable upon employee attending work; employer claiming allowance payable only after full day of work; grievance dismissed. *Re The Electrical Power Systems Construction Association and The Ontario Allied Construction Trades Council; union grievance*, September 7, 1978. Majority: Brown, Filion — 11 pages; dissent: Kobryn — 1 page. (11)

Demotion

Grievor bumped by previous job holder who had been *unsuccessful when promoted: whether extenuating circumstances according to agreement language to preserve bumping rights beyond 30 day training period; grievance dismissed. Re Ralston Purina of Canada Limited and United Automobile Workers, Local 636; Swerdfenger grievance, September 15, 1978. McCulloch — 9 pages. (12)*

Discharge

Absenteeism: record considered both as innocent absenteeism and as culpable absenteeism which could support discipline; three month suspension substituted, reinstatement conditional on above average attendance for three months. *Re Rockwell International of Canada Limited, Plastics Division, Gananoque and United Steelworkers of America, Local 3209; O'Hearn grievance, August 19, 1978. Whyte — 17 pages. (13)*

Assault — employee struck patient numerous times without justification or cause: whether harming or striking patients *per se* grounds for dismissal; whether grievor's past good conduct relevant; grievance dismissed. *Re Ongwanada Hospital, Penrose Division and Ontario Public Service Employees' union, Local 433; Hickey grievance, August 7, 1978. Majority: Brunner, Wakely — 31 pages; dissent: Switzman. (14)**

Assault — grievor intoxicated during working hours: grievance dismissed. *Re Kelsey-Hayes Canada Limited and United Automobile Workers, Local 636; Lewis grievance, September 25, 1978. Weatherill — 7 pages. (15)*

Change of penalty — grievor concealing identity of fellow worker who allegedly set fire in another's pants: grievor disciplined on occasion and subsequently discharged a year later after facts more fully known; reinstatement with compensation. *Re Barber Hydraulic Turbine Limited and United Steelworkers of America; Allan grievance, September 19, 1978. Majority: O'Shea, Moreau — 15 pages; dissent: Curry — 2 pages. (16)*

Company alleging grievor replaced by "more appropriate or more talented" broadcaster: grievance dismissed. *Re Multiple Access Limited (CFCF-TV, CF-Radio and CFQR-FM) and The Association of Canadian Television and Radio Artists; McConnell grievance, September 5, 1978. Brunner — 19 pages. (17)*

Culminating incident — grievor absent from work without permission because of domestic troubles: unsatisfactory attendance record; grievance dismissed. *Re Lake Ontario Steel Company Limited and United Steelworkers of America, Local 6571; Lloyd grievance, September 5, 1978. Majority — Hinnegan, McKillop — 4 pages; dissent: Barko. (18)*

Culminating incident — repeated failure to give notice of absences from work: grievor sick during absence which caused dismissal; reinstatement without compensation. *Re Allen Industries Canada Limited and United Automobile Workers; McDonald grievance, September 18, 1978. Weatherill — 7 pages. (19)*

Damage to company vehicle: failure to make a full report of incident; grievance dismissed. *Re Misner Beverages and United Cement, Lime and Gypsum Workers International Union; Bailey grievance, September 19, 1978. Majority: O'Shea, Smith — 13 pages; dissent: Reilly — 1 page. (20)*

Falsification of time records — grievor following alleged timing practice: practice contrary to collective agreement; suspension substituted. *Re International Harvester Co. of Canada Limited and United Steelworkers of America, Local 2868; Burrus grievance, September 26, 1978. O'Connor, Sharp, Allaster — 7 pages; addendum: Sharp — 2 pages. (21)*

Grievors took work break outside mill contrary to company rule: progressive discipline provided for in agreement; factors to be considered in assessing the severity of penalty imposed; reinstatement without compensation. *Re Dominion Textiles Limited and United Textile Workers of America, Local 469; Antoine and Duff grievances, July 24, 1978. Abbott, Bouchard, Mills — 9 pages. (22)*

Incompetence — grievor failing to perform job in satisfactory manner: no available substitute position; reinstatement with layoff status. *Re Drug Trading Company Limited and Canadian Chemical Workers Union, Local 11; Colby grievance, August 30, 1978. O'Shea, McIlwain, Freedman — 12 pages. (23)*

Incompetence — whether alleged inadequate service merited discipline: grievance allowed. *Re The Ontario Jockey Club and Restaurant, Cafeteria and Tavern Employees Union, Local 254 of the Hotel and Restaurant Employees and Bartenders International Union; Martin grievance, August 18, 1978. Majority: Brunner, Tate — 15 pages; dissent: Hamilton — 3 pages. (24)*

Insubordination — repeated refusal of grievor to wear safety glasses: no previous discipline; reinstatement without compensation. *Re Denison Mines Limited and United Steelworkers of America; Rouleau grievance, August 5, 1978. Palmer — 28 pages. (25)*

Insubordination — union steward: grievor's age, years to retirement and labour market mitigating penalty; suspension substituted. *Re County of Middlesex, The Corporation of and Canadian Union of Public Employees, Local 2018; Pascuzzo grievance*, August 28, 1978. Stewart, Martin, Hockin — 9 pages. (26)*

Lateness — grievor failing to report his absence from work within required time: grievor violated reporting policy four times within six month period; grievance dismissed. *Re City of Sudbury, The Corporation of and Canadian Union of Public Employees, Local 1662; Burke grievance*, September 8, 1978. Majority: O'Shea, Szymanski — 13 pages; dissent: Dungey — 9 pages. (27)

Onus of proof — alleged improper advances and assault on customer's daughter: consideration of standard and burden of proof and corroboration; grievance dismissed. *Re Toronto Hydro-Electric System and Local 1, Canadian Union of Public Employees; Rahim grievance*, September 18, 1978. Kennedy — 21 pages. (28)*

Quit alleged — grievor's alleged quitting a result of verbal altercations with supervisor: factors militating against resignation; grievance allowed. *Re The Consumer's Gas Company and International Chemical Workers' Union, Local 161; Reid grievance*, July 26, 1978. Majority: Palmer, Simon — 33 pages; dissent: Healy — 3 pages. (29)

Discipline

Absence from work — failure to return from lunch to perform overtime as agreed: grievors drinking with foreman who did not return to complete his shift; penalty reviewed in light of prior related offence; lesser suspension substituted. *Re Pullman Trailmobile Canada Limited and United Automobile Workers, Local 397; Kuchoki and Wormald grievance*, September 19, 1978. O'Shea — 14 pages. (30)

Absence from work without permission: grievor failing to inform employer of his absence and give reasonable notice thereof; grievance dismissed. *Re Rockwell International of Canada Limited and United Automobile Workers, Local 1067; Brown grievance*, September 6, 1978. Brunner — 12 pages. (31)

Carelessness — grievor aware of high level proficiency requirements: past record of progressive discipline for carelessness and other discipline problems; grievance dismissed. *Re Livingston Industries Limited and The International Woodworkers of America; Rajda grievance*, September 7, 1978. Majority: Shime, Wakely — 7 pages; dissent: Marcantonio. (32)

Illegal strike — October 14 day of protest: grievors had no quarrel with employer but work stoppage had political motive; whether a strike; grievance dismissed. *Re Ontario Hydro and Canadian Union of Public Employees, Local 1000; group grievance*, August 31, 1978. Majority: Swan, Correll — 11 pages; dissent: Sack — 1 page. (33)

Incompetence — loggers failing to cut timber within specification: whether specifications made clear to employees; grievance allowed. *Re The Abitibi Paper Company Ltd. (Iroquois Falls Division) and The Lumber and Sawmill Workers' Union, Local 2995; group grievance*, August 23, 1978. Majority: Brunner, Wren — 29 pages; dissent: Sutton — 7 pages. (34)

Incompetence — whether grievor's care of elderly patient correct and reasonable nursing procedure: grievance allowed. *Re Waterloo, The Regional Municipality of and Ontario Nurses' Association, Local 128; Reid grievance*, August 15, 1978. Palmer, Noble, Richards — 7 pages. (35)

Insubordination: grievor refusing to adhere to dress regulations; grievance dismissed. *Re Air Canada and Canadian Air Line Flight Attendants Association; Nolan grievance*, September 8, 1978. O'Shea — 15 pages. (36)

Leaving work without permission: grievor failing to discuss illness or request permission to leave before departing; grievance dismissed. *Re Bell Canada and Communications Workers of Canada, Local 26; Miklausic grievance*, September 13, 1978. Burkett — 12 pages. (37)

Progressive discipline — five day suspension with pay imposed instead of two day suspension without pay as provided in company rules: disciplinary scheme not part of collective agreement; grievance dismissed. *Re Canadian Car Division Hawker Siddeley Canada Ltd. and United Automobile Workers (UAW-CLC) and Local 1075; Di Stefano grievance*, September 15, 1978. Brown — 11 pages. (38)

Suspension — suspension period included statutory holiday: similar breach one month earlier resulted in warning; whether penalty reasonable; whether right to holiday pay; grievance allowed in part. *Re City of Brampton, The Corporation of and Amalgamated Transit Union, Local 1573; Lucas grievance*, September 20, 1978. Majority: Shime, Fillion — 7 pages; dissent: Austin. (39)*

Evidence

Extrinsic evidence: whether insurance policy and explanatory brochures admissible to determine amount of sick pay to be paid grievors; previous decision of different Board having determined that ambiguity present; extrinsic evidence admissible. *Re Union Gas Limited and Canadian Chemical Workers Union, Local 6; Neal, Sheppard grievances*, August 31, 1978. Interim award. Majority: Brown, Phelps — 13 pages; dissent: Punnett. (40)

Provincial Court judgement — discharge based on finding of Provincial Court: grievor tendering no contrary probative evidence; grievance dismissed. *Re Barber Hydraulic Turbine Limited and United Steelworkers of America; Zacharjusz grievance*, September 19, 1978. O'Shea, Moreau, Curry — 12 pages. (41)*

Grievance Procedure

Discovery of documents — promotion grievance: employer refused to provide copies of exam to grievors before hearing; whether employer concern for public display of the exams warrants refusal to produce them for hearing; production of documents ordered. *Re City of Peterborough, The Corporation of and The Peterborough Professional Fire Fighters Association, Local 519 of The International Association of Fire Fighter; Brown and union grievances*, September 14, 1978. Brown — 16 pages. (42)*

Formal requirements — company failing to advise union "of the pertinent facts affecting the employee's status" prior to implementing decision to terminate employee; whether requirement directory or mandatory; grievance dismissed. *Re Multiple Access Limited (CFCF-TV, CF-Radio and CFQR-FM) and The Association of Canadian Television and Radio Artists*, See (17), *supra*. (43)

Lay-Off

Bumping rights: whether employees obliged to actively assert bumping rights; whether employer must facilitate exercise of bumping rights; grievance allowed. *Re Purity Packaging Limited and Canadian Paperworkers Union, Local 685; Nihill and Styles grievances*, September 6, 1978. Dunn — 4 pages. (44)

Closure of plant due to widespread consumption of alcohol on last work day before Christmas: no guarantee of working hours in collective agreement; grievance dismissed. *Re Canadian Car Division Hawker Siddeley Canada Limited and United Automobile Workers, Local 1075; union grievance*, September 20, 1978. Hinnegan — 5 pages. (45)

Overtime

Entitlement — employee signing overtime book to volunteer for overtime: overtime offered to other employees in accordance with agreement but refused; employer then re-organized shift to avoid need for overtime; whether employer obliged to offer overtime to grievor; grievance dismissed. *Re Dominion Textile Limited and United Textile Workers of America, Local 469; MacDougald grievance*, August 15, 1978. Abbott, Bouchard Mills — 8 pages. (46)

Entitlement — failure of employer to contact grievor for overtime: effect of refusal of earlier opportunity for overtime; grievance allowed. *Re Allied Chemical Canada, Limited and United Automobile Workers, Local 89; Jones grievance*, September 13, 1978. Brandt — 7 pages. (47)

Overtime Pay

Shift change — shift schedule resulting in work in excess of eight hours over twenty-four hour period: whether overtime applicable to scheduled change of shift; grievances dismissed. *Re Conveyor Belt Maintenance Service Limited and United Steelworkers of America, Local 6363; Beljo, Kasepchuk grievances*, July 28, 1978. Majority: Brunner, Buckland — 13 pages; dissent: Burrows — 2 pages. (48)

Shift change without 72 hours notice to be compensated at time and one-half: lunch hours in regular shifts changed; whether premium pay applies to entire shift or to any hours of work changed without appropriate notice; grievance dismissed. *Re Carborundum Company Electro Minerals Division Niagara Falls, New York and United Steelworkers of America District 6 - Local 4151 From St. Catharines and Niagara Falls; Slater and Pearson grievances*, August 31, 1978. Gorsky, Sharp, Chase — 4 pages. (49)

Probationary Employee

Grievor claiming right to consideration for advancement from temporary to regular employment status: grievance allowed. *Re Brewers Warehousing Company Limited and United Brewers' Warehousing Workers' Provincial Board; Simpson grievance*, September 11, 1978. Weatherill — 11 pages. (50)

Promotion

Assessment of applicants — not all applicants interviewed: board requires some evidence as to how decision was made before it can decide grievance; grievance allowed, interview ordered. *Re Uniroyal Ltd. and Local Union 80, United Rubber, Cork, Linoleum and Plastic Workers of America; Coulas grievance*, September 5, 1978. Majority: Brent, Collins, — 11 pages; dissent: Johnson — 1 page. (51)*

Qualifications — junior employee awarded job on basis of greater skills acquired by his assignment to more taxing responsibilities during two years in same classification as grievor: grievance dismissed. *Re Brampton Hydro-Electric Commission and International Brotherhood of Electrical Workers, Local 636; Heeringa grievance*, September 19, 1978. Majority: O'Shea, Filion — 12 pages; dissent: Heslinga. (52)

Qualifications — whether grievor lacked necessary formal education or closely related work experience; grievance dismissed. *Re Sudbury Social Services Administration Board and Canadian Union of Public Employees, Local 207; Trainor grievance*, September 11, 1978. Majority: O'Connor, Reid — 8 pages; dissent: McVey. (53)

Recall

Grievor laid off later than another employee with equal seniority and equal ability and skill and also recalled later: agreement provides that employees shall be recalled in reverse order; grievance allowed. *Re Westinghouse Canada Limited and United Electrical, Radio and Machine Workers of America, Local 543; Sootheran grievance*, September 5, 1978. Majority: Hinnegan, Bosnich — 5 pages; addendum: Kacur — 1 page. (54)

Scheduling of Work

Change in starting time of day shift: premium rate entitlement when change in shift schedule results in less than 15 hours between end of old and start of new schedule; whether constitutes change in shift schedule; grievance dismissed. *Re Union Carbide Canada Limited and United Electrical, Radio and Machine Workers of America, Local 523; policy grievance*, September 15, 1978. Majority: O'Connor, Orsini — 5 pages; dissent: Wright — 1 page. (55)

Seven day operation: whether contrary to collective agreement and illegal under the *One Day's Rest in Seven Act*; grievance allowed. *Re Commonwealth Holiday Inns of Canada Limited (Oshawa) and Hotel and Club Employees' Union, Local 299; union grievance*, August 15, 1978. Gorsky, Binning, Tate — 16 pages; addendum: Binning — 1 page. (56)*

Seniority

Calculation — departmental seniority lists: grievor transferred from one department to another; whether transfer results in loss of accumulated seniority; grievance allowed. *Re Alexander Centre Industries Limited and United Steelworkers of America, Local 7842; Blais grievance*, September 5, 1978. Majority: Kates, Carriere — 10 pages; dissent: McNamara — 1 page. (57)*

Strike

Concerted refusal by employees to volunteer for overtime: whether a strike; grievance allowed. *Re City of Sudbury, The Corporation of and Canadian Union of Public Employees, Local 1662; employer grievance*, September 5, 1978. Majority: Palmer, Sanderson — 13 pages; dissent: Ouellette — 8 pages. (58)

Grievors took work break outside mill contrary to company rule: whether this constitutes a "stoppage of work"; reinstatement without compensation. *Re Dominion Textile Limited and United Textile Workers of America, Local 469*. See (22), *supra*. (59)

Termination

Health and safety — severe hearing disability jeopardizing plant safety: extent of disability not discovered until grievor transferred; whether company estopped from terminating upon discovery of danger disability poses in new department; grievance dismissed. *Re Canadian Car Division Hawker Siddeley Canada Ltd. and United Automobile Workers (UAW-CLC) and Local 1075; Francis grievance*, September 5, 1978. Brown — 26 pages. (60)

Union Officials

Discrimination — alleged discrimination for union activities: whether company's actions a reasonable exercise of management rights; grievance dismissed. *Re Ottawa Citizen and Ottawa Newspaper Guild, Local 205; McCarthy, Fitzrandolpn and McAlear grievances*, September 5, 1978. Majority: Kennedy, Dinsdale — 9 pages; dissent: Weatherdon. (61)*

Union Security

Deduction of union dues — whether dues deduction authorizations are irrevocable; grievance dismissed. *Re Butcher Engineering Enterprises Limited and United Automobile Workers, Local 1285; union grievance*, August 29, 1978. Palmer — 9 pages. (62)*

Vacation

Scheduling — vacation properly selected: grievor subsequently transferred departments and employer advanced vacation; whether adherence to vacation selection procedure freezes vacation period; grievance allowed. *Re Air Canada and Canadian Air Line Employees' Association; Blundell grievance*, September 20, 1978. Shime — 13 pages. (63)*

Wages

Responsibility allowances — allowances to be based on enrolment figures: whether an enrolment drop constitutes a change in responsibility thereby reducing allowances; grievance dismissed. *Re The Muskoka Board of Education and The Ontario Public School Men Teachers' Federation; Hube grievance*, August 21, 1978. Majority: Lunney, Valin — 7 pages; dissent: Felker. (64)

Temporary assignment — time spent doing supervisor's work: whether a "higher rated job"; grievance dismissed. *Re The Religious Hospitallers of Hotel Dieu of St. Joseph of the Diocese of London in Ontario and Service Employees' Union, Local 210; Giffen grievance*, August 3, 1978. Majority: Brunner, Bartlet — 10 pages; dissent: Coburn — 5 pages. (65)

Welfare Plans

Premiums — pension plans: whether payable in respect of pay in lieu of notice pursuant to the *Employment Standards Act*; grievance allowed. *Re Thompson Newspapers Limited — The Sudbury Star and Sudbury Typographical Union, Local 846; group grievance*, August 31, 1978. Majority: O'Shea, Edey — 9 pages; dissent: Dinsdale — 8 pages. (66)

The following awards in interest arbitrations under *The Hospital Labour Disputes Arbitration Act* were also filed with the Commission during the month of September, 1978:

Hamilton-Wentworth, Regional Municipality of and Ontario Nurses' Association (Macassa and Wentworth Lodges)
Local 72, Brown, Walsh — 16 pages; dissent: Stringer.

Hotel Dieu of St. Joseph's Hospital and Ontario Nurses' Association, Burkett, Walsh — 17 pages; addendum: Bartlett — 1 page.

Lennox and Addington County General Hospital and Service Employees' Union, Local 183, Simmons, Bentley, Hughes — 28 pages.

Scarborough Centenary Hospital and Ontario Nurses' Association, Burkett, Phelps, Walsh — 8 pages.

Walter P. Hogarth Memorial Hospital and Ontario Nurses' Association (full-time and part-time employees), Final Award: Baum, Walsh — 30 pages; addendum: Gilman — 6 pages.

Wellesley Hospital and Group of Hospitals (43 in number) and Service Employees' Union, Locals 183, 268, 532, 204, 478 and 777, Simmons, Wright, Geiger — 15 pages.

City of Windsor, The Corporation of and Ontario Nurses' Association, Brent, Mayne — 15 pages; dissent: Kavanaugh — 4 pages.

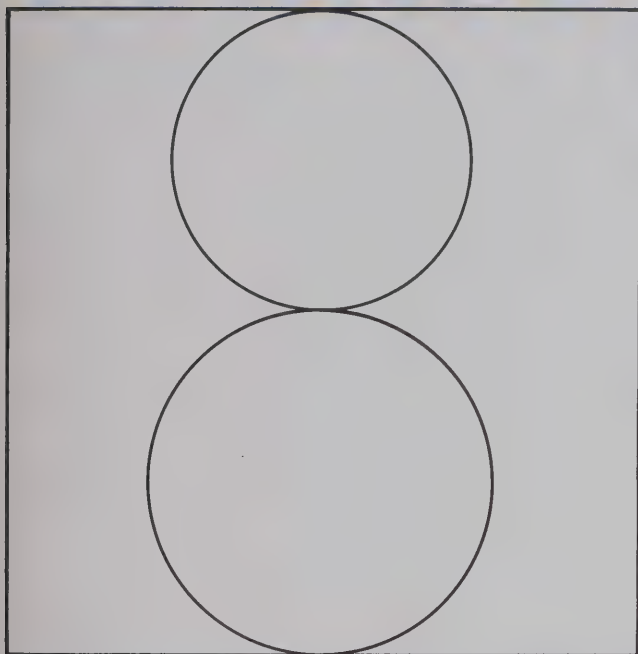
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Filing Awards

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Monthly Bulletin



The Ontario Labour-Management
Arbitration Commission

His Honour Judge Walter Little, Chairman
Dorothy M. Johnson, Registrar

Ontario Ministry of Labour
400 University Avenue, 14th Floor
Toronto, Ontario
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Hon. Robert Elgie, M.D., Minister
T.E. Armstrong, QC, Deputy Minister

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Awards

The following awards were filed with the Commission during the month of October, 1978, under Section 6(2) of Ontario Regulation 635, R.R.O. 1970.

The summary was prepared at the Faculty of Law, Queen's University, under the supervision of C.G. Simmons, B.A., B.C.L., LL.M., and K.P. Swan, B.Eng., LL.M.

*Indicates award to be reported in full or in part in *Labour Arbitration Cases*.

Arbitrability

Classification —whether board of arbitration may articulate job description for disputed jobs; grievances not arbitrable.

Re The Ottawa Civic Hospital and Canadian Union of Public Employees, Local 576; Hoy and Whyte grievance, September 21, 1978. Johnson, Dixon, Switzman — 8 pages. (1)

Timeliness — company contends both grievance filing and appointment of Board were over time limits: whether time limits should run from discharge or later discovery of intent by company to discriminate; grievance arbitrable. *Re Texaco Canada Ltd. and Oil, Chemical and Atomic Workers International Union, Local 9-599; St. Louis grievance*, September 25, 1978. Baum, Clawson, Edwards — 10 pages. (2)*

Bargaining Unit

Scope: union claiming inclusion of Engineering Assistant; prior incumbents excluded by their professional qualifications; current incumbent not a professional engineer; grievance allowed. *Re City of Stratford, Corporation of and Canadian Union of Public Employees, Local 1385; policy grievance*, October 27, 1978. Gorsky, Pennesi, Waller — 8 pages. (3)*

Scope — union claiming inclusion of Engineers while training: some duties overlap with bargaining unit positions; grievance dismissed. *Re Square D Company Canada Limited and United Electrical, Radio and Machine Workers of America, Local 511; policy grievance*, October 16, 1978. Majority: O'Shea, Werry — 19 pages; dissent: Bosnich — 2 pages. (4)

Call Back

Minimum call back guarantee — whether guaranteed hours payable at overtime rates; grievance allowed. *Re Air Canada and Canadian Air Line Employees' Association; Ballard and Nordhoff grievances*, October 16, 1978. Burkett — 11 pages. (5)

Classification

Grievor claiming classification of "Minor Head": employer awarding classification of "Subject Supervisor 'A' Level"; grievance dismissed. *Re Sudbury Board of Education and Ontario Secondary School Teachers' Federation, District 31; Aceti grievance*, July 31, 1978. Majority: Linden, Buckland — 9 pages; dissent: Clarke — 9 pages. (6)

Damages

Check-off — calculation of amount payable: damages fixed. *Re The Citizen (A Division of Southam Press Limited), Ottawa and The Ottawa Newspaper Guild, Local 205 of the Newspaper Guild; policy grievance*, October 4, 1978. Hinnegan, Emond, Dinsdale — 4 pages. (7)

Discharge

Absence — grievor on light duties: whether grievor engaged in activities inconsistent with claim for light duties; reinstatement with compensation. *Re Massey-Ferguson Industries Limited and United Automobile Workers; employee grievance*, September 29, 1978. Shime — 14 pages. (8)

Absence without leave: grievor requested and was refused leave of absence in addition to vacation; grievor claiming she fell ill during vacation; grievance dismissed. *Re Tend-R-Fresh Plant, United Co-operatives of Ontario and The Amalgamated Meat Cutters and Butcher Workmen of North America; Rodrigues grievance*, October 16, 1978. Majority: Adams, Dinsdale — 14 pages; dissent: Switzman. (9)

Absence without leave — supervisor thinking grievor's reason for absence a deliberate lie: employer considering grievor's past work record and attitude unsatisfactory; no formal disciplinary record; suspension substituted. *Re Weston Bakeries Limited and Milk and Bread Drivers, Dairy Employees, Caterers and Allied Employees, Local 647; Koran grievance*, September 18, 1978. Majority: Abbott, Hughes — 23 pages; dissent: Smith. (10)

Absenteeism — significant history of absence from work related to psychiatric problem; reinstatement on probation. *Re Inglis Limited and United Steelworkers of America, Local 4487; Sawyer grievance*, October 20, 1978. Curtis — 13 pages. (11)

Alcoholism — after discharge grievor sought medical help and took rehabilitative steps: whether Board should exercise its remedial powers under Section 37(8) of the Labour Relations Act; reinstatement without compensation. *Re Labatt's Ontario Breweries Limited and National Brewery Workers' Union, Local 1; Macdonald grievance*, October 4, 1978. Brunner, Meagher, Filion — 20 pages. (12)*

Arbitrable review: no specific provision in agreement for review of discharge; grievance not arbitrable. *Re Town of Leamington, The Corporation of and Canadian Union of Public Employees, Local 528; Mady and Morris grievances*, August 14, 1978. Majority: Stewart, Bartlet — 12 pages; dissent: Anderson. (13)*

Company rules — grievor deviating from planned school bus route: grievor driving ten ton bus over bridge with five ton load limit; suspension substituted. *Re The Hamilton Street Railway Company and Amalgamated Transit Union, Division 107; Chiarelli grievance*, October 13, 1978. Majority: Kruger, Bosnich — 9 pages; dissent: Mitchnick — 3 pages; partial dissent: Bosnich — 1 page. (14)

Culminating incident — grievor involved in physical activities inconsistent with his being on sick leave: sickness and previous incidents may have stress as a cause; reinstatement without compensation. *Re Riverside Hospital of Ottawa and International Union of Operating Engineers, Local 796; Judge grievance*, October 3, 1978. Kennedy, Rivét, Ball — 10 pages. (15)

Demerit system: grievor charged with insubordination, absence from his work place and verbal abuse; last count not upheld; demerit points insufficient for discharge; reinstatement without compensation. *Re Algoma Steel Corporation and United Steelworkers of America, Local 2251; Brochu grievance*, October 11, 1978. Majority: Shime, Shell — 18 pages; dissent: Morley — 2 pages. (16)

Drinking during off-duty hours: whether a culminating incident; effect of agreement between employer and employee, to which union not a party; concerning abstinence as a condition of continuing employment; grievance allowed. *Re Ontario Hydro and Canadian Union of Public Employees, C.L.C.; Ontario Hydro Employees Union, Local 1000; Delanty grievance*, September 19, 1978. Majority: Brunner, Arsenault — 22 pages; dissent: Gray — 13 pages. (17)

Grievor unable to perform duties due to health problem: whether company obligated to establish position for grievor; grievance dismissed. *Re Dominion Stores Limited and Retail, Wholesale and Department Store Union; Armitage grievance*, July 11, 1978. Majority: Egan, White — 6 pages; dissent: LaChance — 3 pages. (18)

Improper personal conduct: grievors engaging in sexual act on company premises during working hours; reinstatement without compensation. *Re Indusmin Limited and United Cement, Lime and Gypsum Workers International Union, Local 488; Clute, Bolton grievances*, October 3, 1978. Majority: Picher, Gordon — 11 pages; addendum: Gordon — 2 pages; dissent: Beckerman — 1 page. (19)*

Negligence — serious accident involving high degree of negligence; grievance dismissed. *Re International Carriers Ltd., Special Commodities Division and Teamsters Union, Local 880; Peladeau grievance*, October 2, 1978. Hinnegan, Sefton, Kobryn — 5 pages. (20)

Procedural requirements — pre-discharge notice to union required for discharge of stewards: telegram sent but not yet delivered; grievance dismissed. *Re Dominion Consolidated Truck Lines Limited and Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 141; Congdon grievance*, October 4, 1978. Majority: O'Shea, Fosberry — 14 pages; dissent: Kobryn — 4 pages. (21)

Sleeping on the job — unusual safety hazard re work setting: whether general notice in company rules sufficient to invoke discipline; reinstatement without compensation. *Re Port Weller Dry Docks, A Division of Upper Lakes Shipping Ltd. and International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers — Local 680 — Port Dalhousie and International Brotherhood of Electrical Works — Local 303 — Niagara Peninsula; Kelly grievance*, October 19, 1978. Majority: Burkett, Wakely — 13 pages; addendum: Wakely — 1 page; dissent: Levinson — 4 pages. (22)

Unsatisfactory work performance: grievor receiving numerous warnings in the past resulting in only temporary improvement; grievance dismissed. *Re The Nipissing Board of Education and Canadian Union of Public Employees, Local 1165; McKeown grievance*, September 28, 1978. McIver — 20 pages. (23)

Procedure requirements — whether improper procedure followed in terminating employment; grievance dismissed. *Re The Budd Automotive Company of Canada Limited and United Automobile Workers, Local 1451; Wilcox grievance*, October 4, 1978. Shime — 7 pages. (24)

Discipline

Insubordination: grievor refusing to carry out orders of supervisor: grievor alleging refusals based on honest belief with respect to his safety; grievance dismissed. *Re Conship Limited and Brotherhood of Railway, Airline and Steamship Clerks, Local 985; Dollimore grievance*, October 2, 1978. Rayner — 7 pages. (25)

Abuse of "professional activity day" — whether circumstances of half day absence from school justify loss of pay, grievance allowed. *Re The Durham Board of Education and Ontario Secondary School Teachers' Federation, District 17; King grievance*, July 28, 1978. Weatherill, Thiessen, Stewart — 10 pages. (26)*

Accident while driving vehicle — grievor did minor damage to a wall with snowplow with which he was not too familiar; no negligence asserted by employer; grievance allowed. *Re The City of Brantford, The Corporation of and Brantford Civic Employees' Union, Local 181; Harrison grievance*, September 5, 1978. Majority: Barton, Dowell — 7 pages; dissent: Noble — 7 pages. (27)

Drinking while on duty: whether employer discharged onus of proof on balance of probabilities, grievance dismissed. *Re Coca-Cola Limited and Soft Drink Workers Joint Local Executive Board; White grievance*, October 4, 1978. Rayner — 9 pages. (28)

Grievor acting in reckless disregard of safety of fellow employees in operation of machine: whether company entitled to take into account grievor's position as union steward in imposing discipline; grievance dismissed. *Re J.H. Normick Incorporated and Lumber and Sawmill Workers' Union of the United Brotherhood of Carpenters and Joiners of America, Local 2995; Blais grievance*, September 29, 1978. Majority: Brunner, Valin — 18 pages; dissent: Wren — 4 pages. (29)*

Incompetence — failure to meet production standards: whether culpable behaviour; grievance dismissed. *Re Canadian Appliance Manufacturing Company Limited and United Steelworkers of America, Local 3129; Martin grievance*, October 5, 1978. Baum — 9 pages. (30)*

Impairment on the job — grievor sent home from job operating heavy equipment due to consumption of alcohol and a drug; previous offense; grievance dismissed. *Re E.B. Eddy Forest Products Limited and Lumber and Sawmill Workers' Union, Local 2693; Fairbairn grievance*, September 22, 1978. Brunner, Bernardo, Wren — 14 pages; addendum: Wren — 1 page. (31)

Production standards — employees failing to reach incentive rate of production but maintaining base rate of production: grievances allowed. *Re Hart and Cooley Manufacturing Company of Canada Limited and United Steelworkers of America, Local 3952; Bateman, Bath grievances*, September 24, 1978. Majority: Rayner, Teal — 9 pages; dissent: McLeod — 2 pages. (32)

Work stoppage: what constitutes active leadership in an illegal walkout; grievance allowed. *Re ITT Aimco Division Mississauga Operation and United Steelworkers of America, Local 7574; Ponte and Tamangi grievances*, October 19, 1978. Kennedy — 12 pages. (33)

Evidence

Admissibility of report prepared under Public Inquiries Act: whether admission of report usurption of grievance procedure; evidence not admissible. *Re City of Toronto, The Corporation of and Canadian Union of Public Employees, Local 79; Risdon grievance*, August 16, 1978. Majority: Christie, Tate — 32 pages; dissent: Paulin — 4 pages; partial dissent: Tate — 2 pages. (34)*

Onus of proof: grievor submitted documentation but did not testify; whether facts upon which validity of grievance could be decided were submitted; grievance dismissed. *Re The Lennox and Addington County Board of Education and Ontario Secondary School Teachers' Federation, District 52; Shaw grievance*, October 23, 1978. Swan, Knott, Riddell — 10 pages. (35)

Grievance Procedure

Group grievance — group grievance by unsuccessful applicant in promotion competition: grievance arbitrable. *Re The Governing Council of the University of Toronto and Canadian Union of Public Employees, Local 1230; group grievance*, October 19, 1978. Burkett, Wren, Cook — 17 pages. (36)

Time limits: union failing to abide by time limits of grievance procedure; whether substantial prejudice; grievance not arbitrable. *Re Bakelite Thermosets Limited and United Rubber, Cork, Linoleum and Plastic Workers of America, Local 380; Letourneau grievance*, September 22, 1978. Rayner, Porter, Burder — 8 pages. (37)

Holiday Pay

Qualifying days: accident occurring while on holiday; effect of extended absence on "first regularly scheduled shift immediately following" the holidays; grievance dismissed. *Re MacMillan Bloedel Building Materials a Division of R. Laidlaw Lumber Co. Limited and International Woodworkers of America, Local 2-700; Farella grievance*, September 25, 1978. Majority: Brunner, Middleton — 11 pages; dissent: Smiley. (38)

Holidays

Days off in lieu — shift rotation making Mondays the only possible lieu day: grievance allowed in part. *Re Regional Municipality of Waterloo (Sunnyside Home) and London and District Service Workers' Union, Local 220, policy grievance*, September 21, 1978. Baum, Switzman, Noble — 11 pages. (39)

Job Evaluation

Criteria set out in schedule: evaluation committee to agree on evaluation; whether agreement on each job factor precludes management objection once all factors combined to create final evaluation; grievance allowed. *Re City of London, The Corporation of and Canadian Union of Public Employees, Local 101; union grievance*, October 10, 1978. Majority: Brown, Richardson — 22 pages; addendum: Brown — 1 page; dissent: Miners — 3 pages. (40)

Job Posting

Temporary vacancy: job not posted; whether company may select more qualified operator where supervisor new and inexperienced, grievance dismissed. *Re Noranda Mines Limited and Canadian Union of Base Metal Workers; Foster grievance*, October 14, 1978. O'Shea — 10 pages. (41)

Lay-Off

Bumping rights — grievor alleging person who bumped him had not previously worked in that job: grievor claiming it must appear on company records that bumping employee previously held classification; grievance dismissed. *Re Maple Leaf Mills Limited and Canadian Chemical Workers Union, Local 18; Swyers grievance*, September 29, 1978. Majority: Brown, Murray — 8 pages; dissent: McIlwain. (42)

Bumping rights — whether entitlement to "familiarization" period to displace junior employee in other classification; grievance dismissed. *Re Asea Limited and United Steelworkers of America, Local 7282; Kuczma grievance*, October 12, 1978. Majority: Kates, Noonan — 12 pages; dissent: Carriere — 2 pages. (43)

Employer terminated shift after six hours as a result of a blizzard: work available; whether unreasonable to close store; grievance dismissed. *Re Dominion Stores Limited and Retail, Wholesale and Department Store Union, Local 414; union grievance*, October 19, 1978. Majority: Curtis, White — 7 pages; dissent: Dahmer — 3 pages. (44)

Grievor alleging improper discharge: company arguing grievor laid off in accordance with agreement; grievor junior employee in his classification; grievance dismissed. *Re Empress Hotel Limited and International Beverage Dispensers' and Bartenders' Union of the Hotel and Restaurant Employees' and Bartenders' International Union Local 604; Smelt grievance*, October 16, 1978. Majority: Hinnegan, Gordon — 4 pages; dissent: How — 2 pages. (45)

Notice of lay-off — temporary shutdown: employees absent from plant for justified reason: extent of requirement of notification; grievance allowed. *Re Canadian Appliance Manufacturing Company Limited and United Steelworkers of America, Local 3129; Wilson grievance*, September 20, 1978. Baum — 13 pages. (46)

Notice of lay-off — temporary shutdown: whether adequate notice given of shutdown; grievances dismissed. *Re Canadian Appliance Manufacturing Company Limited and United Steelworkers of America, Local 3129; Dee and Macri grievances*, September 21, 1978. Baum — 8 pages. (47)

Plant workers temporarily laid off while office workers observing "floater holiday": union alleging lay-off unreasonable and tantamount to "lock-out"; grievance dismissed. *Re Canadian Appliance Manufacturing Company and United Steelworkers of America, Local 3129; union grievance*, October 10, 1978. O'Shea — 15 pages. (48)

Overtime

Cancelled overtime assignment: whether overtime posted on schedule part of "regular work" schedule; grievance dismissed. *Re Dominion Stores Limited and Retail, Wholesale and Department Store Union, Local 414; Combaluzier grievance*, October 19, 1978. Majority: O'Shea, White — 10 pages; dissent: Spaxman — 2 pages. (49)

Entitlement — grievor claiming he was not asked to work overtime in his department while men from other departments were: company offering to permit grievor to work an equal amount of overtime at his convenience; grievance allowed. *Re Mobil Chemical Canada Limited, Coatings Division and United Steelworkers of America, Local 14049; Shantry grievance*, October 4, 1978. Brown — 14 pages. (50)

Grievor alleging overtime assignment improperly denied: whether company required to offer present employees temporary vacancies before arranging for casual help; grievance dismissed. *Re Canteen of Canada Limited and Retail, Wholesale and Department Store Union, Local 414; Neil grievance*, September 29, 1978. Brown, Spaxman, von Veh — 11 pages. (51)

Overtime Pay

Entitlement — employees of hydro commission stranded in snowstorm claim to have been on call all night and thus qualified for overtime pay; grievance allowed. *Re Kitchener-Wilmot Hydro Commission and International Brotherhood of Electrical Workers, Local 636; group grievance*, October 23, 1978. Rayner, Heslinga, Sanderson — 6 pages. (52)

Promotion

Ability and diligence criteria: onus of proof re reasonableness of decision; grievance dismissed. *Re Town of Oakville, The Corporation of and Canadian Union of Public Employees, Local 136; Ashford grievance*, October 16, 1978. Majority: Brent, Mathews — 10 pages; dissent: Hambleton. (53)

Qualifications — ability, knowledge, training and skill to all intents and purposes equal: whether company acted in unfair or unreasonable manner; grievance dismissed. *Re Falconbridge Nickel Mines Limited and Sudbury Mine, Mill and Smelter Workers Union, Local 598; Mayer grievance*, September 29, 1978. Majority: Brown, Valin — 12 pages; dissent: Grant — 2 pages. (54)

Qualifications — criteria used to assess applicants: whether decision reasonable; grievance allowed. *Re Fleet Industries and International Association of Machinists and Aerospace Workers, Lodge 171; McKinnon grievance*, October 13, 1978. Dunn, Wren, Marchand — 5 pages. (55)

Qualifications: grievor claiming she had potential capability to perform job after normal familiarization period; company arguing specific skills required before employee entitled to familiarization period; grievance allowed. *Re Northern Telecom Limited and United Electrical, Radio and Machine Workers of America, Local 531; Handy grievance*, September 23, 1978. Fraser — 25 pages. (56)

Qualifications: less senior employee temporarily promoted over grievor; whether qualifications relatively equal; grievances allowed in part. *Re Borough of York, The Corporation of and Canadian Union of Public Employees, Local 10; Roach grievances*, October 23, 1978. Majority: Picher, Fagan — 11 pages; dissent: Purdy — 2 pages. (57)

Qualifications — reasonableness of employer's experience requirements; grievance dismissed. *Re City of Sault Ste. Marie Board of Works and Canadian Union of Public Employees, Local 3; Carson, Coulis and Evans grievances*, October 18, 1978. Majority: Johnston, Kelleher — 12 pages; did not concur: McArthur. (58)

Qualifications — whether applicants equal in knowledge and ability to perform "normal requirements" of job; grievance dismissed. *Re The Hydro Electric Commission of the Borough of North York and Canadian Union of Public Employees, Local 11; Craig grievance*, September 26, 1978. Majority: Brunner, Chatland — 13 pages; dissent: Wren — 3 pages. (59)

Qualifications — whether grievor's ability and qualifications to perform the work relatively equal to that of successful job applicant; grievance dismissed. *Re Fisher Controls Company of Canada Limited and United Automobile Workers, Local 636; Gaetan grievance*, September 25, 1978. Majority: O'Shea, O'Donoghue — 8 pages; dissent: Cooper — 1 page. (60)

Qualifications — whether experience standard reasonable; grievance dismissed. *Re Mount Sinai Hospital and Ontario Public Service Employees' Union, Local 570; Ngui-Yen grievance*, August 30, 1978. Abbott, Robbins, Clawson — 11 pages; addendum: Robbins — 3 pages. (61)

Recall

Grievor failing to return to work within specified period following notification: whether excuse offered by grievor "reasonable"; grievance allowed. *Re Canada Forgings, A Division of Toromont Industries Limited and United Automobile Workers, Local 275; Watts grievance*, October 17, 1978. Hinnegan — 8 pages. (62)

Recall from lay-off: part-time employee with less seniority called in to do work grievor would ordinarily do; grievance dismissed. *Re Sturgeon Falls, Town of and Canadian Union of Public Employees, Local 535; unnamed grievance*, August 31, 1978. Majority: Duchesneau-McLachlan, Murray — six pages; dissent: Level. (63)

Remedies

Company conceding error in work scheduling: whether compensation "in kind" appropriate remedy for lost hours; grievance allowed in part. *Re Dominion Stores Limited and Retail, Wholesale and Department Store Union, Local 414; Wilson grievance*, October 25, 1978. Majority: Rayner, Barron — 6 pages; dissent: White — 2 pages. (64)

Res Judicata

Issue involving interpretation involved in previous arbitration; whether Board bound by previous decision; grievance dismissed. *Re Cambrian College and Public Service Employees Union; Ziegler grievance*, October 25, 1978. Majority: Rayner, Clawson — 7 pages; dissent: McIntyre — 6 pages. (65)

Safety

Training — flight crews not receiving all the aircraft simulator time they are entitled to; grievance allowed. *Re Air Canada and Canadian Airline Pilots Association; group grievance*, October 10, 1978. Majority: O'Shea, von Veh — 19 pages; dissent: O'Reilly — 7 pages; schedule — 15 pages. (66)

Sick Pay

Entitlement — grievor on sick leave for portions of two calendar years: whether single illness entitles her to just one year's quota of sick pay; grievance dismissed. *Re Domtar Fine Papers Limited and Office and Professional Employees International Union, Local 263; Fitzpatrick grievance*, October 24, 1978. Majority: Rayner, Byers — 6 pages; dissent: Best. (67)

Strike

Recall from strike — recall on basis of seniority and performance: measurement of performance disputed; grievance allowed. *Re The Becker Milk Company Limited and Milk and Bread Drivers, Dairy Employees, Caterers and Allied Workers, Local 647, Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America; Turner grievance*, October 16, 1978. Burkett — 10 pages. (68)

Transfer

Employer unilaterally transferring grievor from one school to another: whether transfer was disciplinary; grievance dismissed. *Re Toronto Board of Education and Ontario Secondary School Teachers' Federation, District 15; Smith grievance*, October 4, 1978. Teplitsky, Posen, Sanderson — 5 pages. (69)

Reduction in work force: skill and ability to pick up job in orientation period; what constitutes orientation period; grievance allowed. *Re Camco Ltd. and United Electrical Workers, Local 504; Smith grievance*, October 12, 1978. Weatherill, Bosnich, Kacur — 8 pages. (70)

Union Rights

Recognition — union claims that collective agreement should extend to new workers brought into company by merger; grievance allowed. *Re Canadian Appliance Manufacturing Company Limited and United Steelworkers of America, Locals 3129 and 7921; union grievance*, October 5, 1978. Shime — 14 pages. (71)*

Vacations

Entitlement: company alleged to have violated agreement in requiring that qualifying date fall within calendar year in which employee's seniority anniversary date occurs; union claiming employee entitled if seniority anniversary date falls within vacation year; grievance allowed. *Re Molson's Brewery (Ontario) Limited and Canadian Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers, Local 304; policy grievance*, October 5, 1978. Lederman — 15 pages. (72)

Entitlement — whether days lost while on lawful strike to be considered in calculating vacation credits; grievance allowed. *Re Hydro Electric Commission of the City of Ottawa and Canadian Union of Public Employees, Local 200; Finner grievance*, August 30, 1978. Scott, Boudreault, Grant — 11 pages. (73)*

Scheduling — vacation shut-down scheduled for three weeks instead of usual two: union claiming scheduling of third week improper; grievance dismissed. *Re Northern Telecom Limited and United Electrical, Radio and Machine Workers of America, Local 531; policy grievance*, October 10, 1978. Ellis — 6 pages. (74)

Wages

Christmas bonus — payable to employees in “continuous service”: whether employees on sick leave included; grievances dismissed. *Re Dominion Stores Limited and United Steelworkers of America, Local 14045; Ridley, Williams, Shaw grievances*, August 29, 1978. Rayner — 6 pages. (75)

Commission sales — account obtained by route salesman claims employee rejected by employer; grievance allowed. *Re Humpty Dumpty Foods Limited and Retail, Wholesale and Department Store Union, Local 461; Thurlow grievance*, October 13, 1978. Majority: Brown, Spaxman — 12 pages; dissent: Nowak — 3 pages. (76)

Equal pay for equal work — grievor claiming she was entitled to rate payable to orderlies when she was assigned to care for male patients; grievance allowed. *Re Waterloo, The Regional Municipality of and London and District Service Workers' Union, Local 220; Johnson grievance*, September 28, 1978. Majority: R.J. Roberts, Walsh — 12 pages; dissent: Noble — 7 pages. (77)*

Grievor classified as labourer while learning work of higher classification: whether entitled to higher rate for learning period once successful; grievance allowed in part. *Re The Ingersoll Cheese Company and Canadian Food and Allied Workers, Local P417; Hutson grievance*, October 16, 1978. Majority: Teplitsky, Switzman — 5 pages; dissent: Houck — 10 pages. (78)

Incentive pay: grievors claiming company improperly withheld bonus payment calculated as percentage of liquor sales made in dining room; company claiming payments contrary to Regulations under *Liquor Licence Act*; grievance allowed. *Re Skyline Hotels Limited and The Hotels, Clubs, Restaurants, Taverns Employees' Union, Local 261; group grievance*, October 5, 1978. Majority: Weatherill, Bishop — 9 pages; dissent: Healy — 2 pages. (79)*

Promotion — employer paid promoted employees higher rate only when management determines each has achieved a satisfactory level of efficiency; grievance allowed. *Re Checkerboard Foods Limited and Canadian Food and Allied Workers; group grievance*, October 6, 1978. Lunney — 7 pages. (80)

Salary progression — whether “Principals’ Course” included in category of “Ministry of Education Courses” for purposes of salary progression under terms of collective agreement; grievance allowed. *Re The Carleton Board of Education and The Teachers' Federation of Carleton; policy grievance*, October 16, 1978. O’Shea, Nelligan, Farrar — 18 pages. (81)

Transportation allowance — payable to nurses called back to work but not dealt with in the collective agreement; whether employer may unilaterally vary allowances; grievance dismissed. *Re The Salvation Army Grace General Hospital, Ottawa and Ontario Nurses' Association, Local 158; policy grievance*, September 29, 1978. Majority: Simmons, Lister — 8 pages; dissent: Done — 5 pages. (82)

Welfare Plans

Disability benefit entitlement — grievor injured himself while doing repair work at laundromat of which he was part owner; grievance dismissed. *Re The Budd Automotive Company of Canada and United Automobile Workers, Local 1451; Doucette grievance*, October 11, 1978. Brown — 12 pages. (83)

Payment of OHIP premiums — whether company bound to absorb increases in premium under collective agreement; grievance dismissed. *Re The Kraus Carpet Mills Limited and The Kraus Carpet Employees Association; union grievance*, October 19, 1978. Majority: O’Shea, Black — 11 pages; dissent: Woodrow — 2 pages. (84)

Sickness and accident insurance — whether grievor within definition of “actively at work” at commencement of claim; grievance dismissed. *Re The Budd Automotive Company of Canada Limited and United Automobile Workers, Local 1451; Williams grievance*, October 3, 1978. Brown — 15 pages. (85)

Supplemental unemployment benefits — union alleging company improperly withheld payments: company claiming employees not on “qualifying lay-off”; grievance dismissed. *Re Inglis Limited (Stoney Creek Plant) and United Auto Workers; union grievance*, October 25, 1978. Majority: Burkett, Churchill-Smith — 11 pages; dissent: Cooper — 1 page. (86)

Work Assignment

Equalization of hours — procedure in route bidding system based on seniority which capped work hours at 44 per week — whether part of “present bidding system” referred to in agreement; grievance dismissed. *Re M. Loeb Limited and Retail, Wholesale and Department Store Union, Local 579; Dobratz grievance*, October 5, 1978. Majority: Hinnegan, Forbes — 8 pages; dissent: LaChance — 2 pages. (87)

Grievor claiming temporary two day promotion to truck driver: no job jurisdiction clause in agreement; whether driving truck part of duties of Tree Climber who performed the work; grievance dismissed. *Re The City of Sault Ste. Marie Community Services Board and Canadian Union of Public Employees, Local 3; Vancoe grievance*, October 18, 1978. Majority: Johnston, Kelleher — 13 pages; did not concur: McArthur. (88)

The following awards in interest arbitrations under *The Hospital Labour Disputes Arbitration Act* were also filed with the Commission during the month of October, 1978:

The McCausland Hospital and Ontario Nurses' Association, Burkett, Walsh — 6 pages; dissent: Dixon.

Madoc Manor Lodge and Retirement Home and Pharmacists and Professional Employees Association, Aggarwal, McKinnon, McCormick — 12 pages.

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arbitrations.

Correction

The description of qualifications reported in *Monthly Bulletin*, December 1978, Volume 8, Number 9, is amended to read:

Professor Ronald J. Delisle, Faculty of Law, Queen's University, Kingston, Ontario, K7L 3N6, telephone (613) 547-5803. (For interest and rights disputes).

Awards

The following awards were filed with the Commission during the month of November, 1978, under Section 6(2) of Ontario Regulation 635, R.R.O. 1970.

The summary was prepared at the Faculty of Law, Queen's University, under the supervision of C.G. Simmons, B.A., B.C.L., LL.M., and K.P. Swan, B.Eng., LL.M.

* Indicates award to be reported in full or in part in *Labour Arbitration Cases*.

Arbitrability

Alternate position — whether grievor confined to claim in grievance as originally filed or permitted to expand claim at arbitration stage: alternate position arbitrable. *Re Carleton University and Carleton University Academic Staff Association; Marwah grievance*, September 28, 1978. Palmer — 8 pages. (1)*

Casual employee — right to grieve: effect of "fairness doctrine"; grievance not arbitrable. *Re City of Toronto and Metropolitan Toronto Civic Employees' Union, C.U.P.E., Local 45; Lang grievance*, November 27, 1978. Majority: R.J. Roberts, Paulin — 12 pages; dissent: Tate — 6 pages. (2)*

Grievor alleging memorandum to him from Dean discriminatory and in violation of collective agreement; grievance not arbitrable. *Re Seneca College of Applied Arts and Technology and Ontario Public Service Employees; Quansah grievance*, November 7, 1978. Brown, Trower, Wright — 15 pages. (3)

Grievor claiming sick benefit under employer maintained insurance while receiving holiday pay: whether employer answerable for refusal of insurer to pay benefit; grievance not arbitrable. *Re Livingston Industries Limited and International Woodworkers of America; Winters grievance*, November 3, 1978. Majority: Burkett, Piroth — 10 pages; dissent: Smiley — 2 pages. (4)

Timeliness — discharge grievance: whether discharge effective when notice mailed to employee; grievance arbitrable. *Re Alcan Canada Products Limited, Aurora Works and Local Union 7193 United Steelworkers of America; Penney grievance*, November 6, 1978. Majority: Kennedy, Robinson — 8 pages; dissent: Ronson — 2 pages; concurring opinion: Robinson — 1 page. (5)

Timeliness — estoppel: objection not raised until present hearing; grievance arbitrable. *Re Inmont Canada Limited and Canadian Chemical Workers Union, Local 25; Hnat grievance*, November 8, 1978. Brown — 18 pages. (6)

Timeliness — grievance not submitted within time limit: grievor in medical condition of depression and tending to forget self interest; grievance arbitrable. *Re City of Toronto, The Corporation of and Toronto Divic Employees' Union, Local 43, Canadian Union of Public Employees; Orr grievance*, November 15, 1978. Majority: Brent, Tate — 14 pages; dissent: Paulin; appendices — 6 pages. (7)*

Timeliness — union failing to give notice of grievance within time limits of agreement: whether time limit directory or mandatory; grievance arbitrable. *Re Smith Transport Company Limited and Teamsters Union, Local 938; Theriault grievance*, October 20, 1978. Interim award: Brunner, Tait, Peel — 34 pages. (8)*

Timeliness — union's request for arbitration delayed because union membership initially voted against arbitration; vote improperly motivated and subsequently reversed; grievance arbitrable. *Re Domtar Packaging Limited and Canadian Paperworkers Union, Local 1470; Willman grievance*, November 22, 1978. O'Shea, Quaife, Healy — 9 pages. (9)

Timeliness — whether reasonable grounds for delay pursuant to s.37(5a) of *Labour Relations Act*: grievance not arbitrable. *Re BP Refinery Canada Limited and Oil, Chemical and Atomic Workers International Union, Local 9-593; Jones grievance*, November 6, 1978. Majority: Shime, Mitchnick — 16 pages; dissent: Edwards — 2 pages. (10)

Union claiming employer failed to provide safe working environment: employer arguing matters grieved not covered in agreement; grievance not arbitrable. *Re Scarborough Centenary Hospital Association and Canadian Union of Public Employees, Local 1320; policy grievance*, November 10, 1978. Hinnegan, Acton, Varty — 8 pages. (11)*

Bargaining Unit

Scope — whether company improperly altered job classification: whether employee in question employed by American parent corporation and not covered by collective agreement; grievance dismissed. *Re Holland Hitch of Canada Limited and United Automobile Workers, Local 636; policy grievance*, November 7, 1978. Majority: Palmer, McNaughton — 7 pages; dissent: Cooper — 1 page. (12)

Board of Arbitration

Jurisdiction to reconvene: whether purpose to determine amount of compensation or to review error of fact; company nominee withdrawing from Board; amount of compensation established. *Re Barber Hydraulic Turbine Limited and United Steelworkers of America; group grievance*, November 27, 1978. Majority: Shime, Sharp — 15 pages; withdrew — Curry. (13)*

Call-In Pay

Employee on company property when work request made: actual inconvenience considered; grievance dismissed. *Re The Peterborough Utilities Commission of the City of Peterborough and Local 1964 of International Brotherhood of Electrical Workers; union grievance*, November 3, 1978. Majority: Palmer, Metcalf — 8 pages; dissent: Nokes — 3 pages. (14)

Entitlement — four to midnight shift called in at three for inservice training: whether call-in pay owed for first hour or overtime for last hour; grievance allowed. *Re Durham Regional Board of Commissioners of Police and Durham Regional Police Association; association grievance*, October 30, 1978. Barton — 13 pages. (15)

Classification

Applicable wage rate — grievor in classification which involves relief work in two classifications and is paid intermediate rate; claims entitlement to higher rate when doing higher rated work; grievance dismissed. *Re Canadian Niagara Power Company Limited and International Brotherhood of Electrical Workers, Local 1674; Feren grievance*, November 17, 1978. Majority: Weatherill, Brownhill — 7 pages; dissent: Wacheski — 4 pages. (16)

Development of new job description and classification: whether company described and factored job improperly; grievance allowed. *Re Canadian Appliance Manufacturing Company Limited, G.S.W. Appliances Division and United Steelworkers of America, Local 3129; union grievance*, November 1, 1978. O'Shea — 13 pages. (17)

Grievor claiming classification of clerk: grievor paid clerk's rate although not performing complete range of clerk's duties; grievance allowed. *Re Canadian Longyear Limited and International Association of Machinists and Aerospace Workers, Local 2412; McDonald grievance*, October 30, 1978. Lunney — 6 pages. (18)

Grievor claiming entitlement to higher pay rate due to nature of work assignment: grievance allowed. *Re Waterloo, The Regional Municipality of and Canadian Union of Public Employees, Local 1656; Stark grievance*, October 30, 1978. Majority: McIver, Maddison — 7 pages; dissent: McEntree — 7 pages. (19)

Contracting Out

Watchman replaced by security firm: extent of control of employer over security officers; whether a valid contracting-out; grievance dismissed. *Re Massey-Ferguson Industries Ltd. and United Automobile Workers, Local 458; policy grievance*, October 17, 1978. Palmer — 13 pages. (20)

Damages

Unjust discharge — suspension substituted: grievor claiming damages relating to lower rate of pay in new job, loss of car allowance, moving expenses, severance pay, and loss of wife's job; damages allowed in part. *Re Frontenac Broadcasting Company Limited and National Association of Broadcast Employees and Technicians; Grose grievance*, November 10, 1978. Simmons — 14 pages. (21)

Demotion

Non-disciplinary demotion — employer transferring grievor from full-time to partial-load status pursuant to new collective agreement: grievor claiming her previous rights preserved by agreement; grievance allowed. *Re Georgian College and Ontario Public Service Employees Union; Gaviller grievance*, November 22, 1978. Majority: O'Shea, Trower — 16 pages; dissent: Wright — 4 pages. (22)

Non-disciplinary demotion: whether employer can demote in lieu of lay-off; grievance allowed. *Re Hallmark Containers Limited and Canadian Paperworkers Union and its Local 303, C.L.C.; Borg grievance*, October 13, 1978. Majority: Egan, Fagan — 8 pages; dissent: Freedman — 4 pages. (23)

Discharge

Absence — satisfactory reasons communicated to employer: whether permission of supervisor also required; grievance allowed. *Re Kelsey-Hayes Canada Ltd., Windsor and United Automobile Workers, Local 195; Lavin grievance*, November 6, 1978. Samuels — 6 pages. (24)

Absence without leave — failure to return to work when recalled at end of lockout: onus to establish legitimacy of medical certificate; grievance dismissed. *Re Arvin Automotive of Canada Limited and United Steelworkers of America, Local 8341; Abihisra grievance*, November 27, 1978. Majority: Kennedy, McKeown — 15 pages; dissent: Curtis — 1 page. (25)

Absence without leave — grievor failing to notify company of anticipated length of his absence and unable to offer a good reason for failure to notify: whether his loss of seniority according to agreement entitled company to discharge grievor; grievance allowed. *Re Gates Rubber of Canada Limited and United Rubber, Cork, Linoleum and Plastic Workers of America, Local 733; Diakun grievance*, November 15, 1978. Majority: Kennedy, West — 15 pages; dissent: Storie — 8 pages. (26)*

Absence without leave — grievor jailed pursuant to a criminal conviction: company refusing to participate in Temporary Absence Program; grievance dismissed. *Re Falconbridge Nickel Mines Limited and Sudbury, Mine, Mill and Smelter Workers' Union, Local 598; Scattergood grievance*, October 24, 1978. Palmer — 10 pages. (27)

Absence without leave: union arguing company failed to do anything to discharge grievor after his seniority ceased pursuant to agreement; grievance dismissed. *Re Chrysler Canada Limited and United Automobile Workers, Local 1285; Dwyer grievance*, October 23, 1978. O'Shea — 16 pages; appendices — 15 pages. (28)*

Absenteeism — alcoholism: employer claiming no foreseeable likelihood of improvement; grievance dismissed. *Re Firestone Canada Limited (Hamilton Plant) and United Rubber, Cork, Linoleum and Plastic Workers of America, Local 113; Martin grievance*, November 21, 1978. Majority: Sheppard, Gilmore — 17 pages; dissent: Switzman — 5 pages. (29)

Absenteeism — medical problems : Depression as result of sickness alleged to be the reason for grievor's non-compliance with employer's requests for medical certificates; grievance allowed. *Re City of Toronto, The Corporation of and Toronto Civic Employees' Union, Local 43, Canadian Union of Public Employees; Orr grievance*. See (7), *supra*. (30)*

Abusive and threatening language towards foreman: grievor having received previous warnings following similar offences; grievance dismissed. *Re True Temper Canada Limited and United Steelworkers of America, Local 2853; Mori grievance*, October 25 1978. Kruger — 6 pages. (31)

Accident with company vehicles — failure to report damage; company failing to give adequate prior warnings; reinstatement without compensation. *Re Tricil Limited and Canadian Union of Public Employees, Local 1045; Lemky grievance*, June 5, 1978. Majority: J.L. Roberts, O'Dell — 8 pages; did not concur: Smith. (32)

Assault of members of management, consuming alcohol on company premises, entering plant under the influence: single incident; mitigating circumstances; suspension substituted. *Re Northern Telecom Limited and United Electrical Radio and Machine Workers of America, Local 531; Worthington grievance*, November 23, 1978. Brunner — 16 pages. (33)

Assault of police officer during strike: whether cause for dismissal must be related to employment relationship; written reasons not provided as required by collective agreement; grievance allowed. *Re Ind-Ex Distributors and Milk and Bread Drivers, Dairy Employees, Caterers and Allied Employees, Local 647; Woods grievance*, October 24, 1978. Brunner — 30 pages. (34)

Carelessness: previous warnings; whether an intentional or careless breach of rule re hazardous activity; suspension substituted. *Re Madawaska Mines Ltd. and Madawaska Mines Employees Association; Card and Pottie grievances*, October 26, 1978. Brown, Martin, Healy — 18 pages. (35)

Culminating incident — leaving work early without obtaining a medical excuse: foreman not warning grievor of the seriousness of his action; reinstatement without compensation. *Re City of Toronto, The Corporation of and Toronto Civic Employees, Local 43, Canadian Union of Public Employees; Finn grievance*, November 22, 1978. Majority: Rubenstein, Tate — 15 pages; dissent: Paulin — 8 pages; addendum: Tate — 2 pages. (36)

Excessive absenteeism related to alcoholism: grievor evidences no commitment to personal rehabilitation; grievance dismissed. *Re Abex Industries Limited and International Chemical Workers Union, Local 175; Johnston grievance*, October 31, 1978. Ellis — 5 pages. (37)

Excessive absenteeism: sick leave entitlement considered; onus on employer to prove future attendance record will not likely improve; reinstatement with compensation. *Re Kingston General Hospital and Canadian Union of Public Employees, Local 1974; Palilionis grievance*, October 23, 1978. Majority: Abbott, Dumbleton — 8 pages; dissent: Bentley — 1 page. (38)

Failure to obey company rules — grievor suspended for violation of cash handling rule and terminated for failing to get receipt for purchase of buns from company bakery: suspension substituted. *Re The Canadian National Institute for the Blind and Canadian Union of Blind and Sighted Merchants, Local 681; Hulford grievance*, November 8, 1978. Majority: O'Connor, Greenaway — 9 pages; dissent: Farrar; addendum: Greenaway — 3 pages. (39)

Falsifying production records: grievance dismissed. *Re Abex Industries Limited, Dominion Brake Shoe Division and International Chemical Workers Union, Local 175; Tuck grievance*, November 23, 1978. Majority: O'Shea, Pogson — 12 pages; dissent: Evenson. (40)

Grounds for discharge — attempt to enlarge grounds for discharge in particulars provided: objection allowed. *Re TAS Communication Services and Communication Workers of Canada; Wong grievance*, November 24, 1978. Brown — 21 pages. (41)

Improper conduct — grievor required to carry pistol for his job: improper, dangerous and illegal use of firearms alleged; suspension substituted. *Re Brink's Canada Limited and Teamsters, Local 419; Newington grievance*, October 30, 1978. Majority: Abbott, King — 24 pages; dissent: Coley — 4 pages. (42)

Inability to perform work — grievor uninsurable as truck driver: grievor also inadvertently falsifying time card; lay-off and suspension substituted. *Re Hendrie and Company Limited and Canadian Brotherhood of Railway, Transport, and General Workers; Hatt grievance*, November 17, 1978. Majority: M.G. Picher, Nelson — 12 pages; dissent: Beresford. (43)

Insubordination — where clear and direct order given: grievance allowed. *Re ITT Aimco Division St. Catharines, Ontario and United Automobile Workers, Local 199; Blashill grievance*, November 21, 1978. Brown — 12 pages. (44)

Leaving work without permission — assigned work not complete: past practice; grievance dismissed. *Re Libby, McNeill and Libby of Canada and United Automobile Workers, Local 127; Rup grievance*, October 26, 1978. Palmer — 15 pages. (45)

Leaving work without permission — grievor leaving newsroom vacant to attend union meeting: suspension substituted. *Re Frontenac Broadcasting Company Limited and National Association of Broadcasting Employees and Technicians; Grose grievance*. See (21), *supra*. (46)

Mental fitness to perform work — conflicting psychiatric evidence as to grievor's ability to function as nurse in pediatric department: conditional reinstatement. *Re A Hospital and Ontario Nurses' Association; anonymous grievance*, November 9, 1978. Majority: Johnston, Switzman — 29 pages; dissent: Phelps — 3 pages; addendum: — one page. (47)

Medical fitness to perform work — grievor in obese condition alleged to affect his fitness as a bus driver; grievance dismissed. *Re City of Brampton, The Corporation of and Amalgamated Transit Union, Local 1573; Devine grievance*, November 15, 1978. O'Connor, Austin, Freedman — 9 pages. (48)*

Negligence — resulting damage to company property and potential danger of explosion: absence of specific training and guidelines; suspension substituted. *Re Wardair Canada (1975) Limited and International Association of Machinists and Aerospace Workers; Scott grievance*, November 22, 1978. O'Shea — 12 pages. (49)

Quit alleged — grievor on maternity leave requested extension despite absence of medical reasons: threat to quit followed by failure to report for work; grievance dismissed. *Re Borden Company Limited and Milk and Bread Drivers, Dairy Employees, Caterers and Allied Employees, Local 647; Haycock grievance*, November 9, 1978. Brunner — 21 pages. (50)

Quit alleged — grievor submitting letter of resignation which appeared to be unqualified: grievor reconsidering his position; grievance dismissed. *Re The International Nickel Company of Canada Limited and Canadian Guards Association, Local 105; Mathias grievance*, November 10, 1978. Majority: Palmer, Bernardo — 17 pages; dissent: McVey. (51)

Quit alleged — whether grievor voluntarily left employment; grievance allowed. *Re The Queen's Hotel and The Restaurant Employees and Bartenders International Union, Local 604; Hopcroft grievance*, October 26, 1978. Majority: Palmer, How — 14 pages; dissent: Whittaker. (52)

Sleeping on job — previous warning: whether grievor treated in manner inconsistent with other employees; grievance dismissed. *Re Sherman Mine and United Steelworkers of America, Local 6896; Lavigne grievance*, October 20, 1978. Lunney — 9 pages. (53)

Summary dismissal — whether dismissal procedure requires formality: wilful damage to employer's property; grievance dismissed. *Re Ind-Ex Distributors Limited and Milk and Bread Drivers, Dairy Employees, Caterers and Allied Employees, Local 647; Smith grievance*, October 26, 1978. O'Shea — 16 pages. (54)

Vandalism to company property during lawful strike: collective agreement providing for summary dismissal where "wilful actions adversely affect the product, property or equipment"; grievance dismissed. *Re The Becker Milk Company Limited and Milk and Bread Drivers, Dairy Employees, Caterers and Allied Workers, Local 647; Stevens grievance*, November 24, 1978. Weatherill — 9 pages. (55)*

Discipline

Absence without permission — failure to follow procedure for obtaining relief man; grievance dismissed. *Re American Can of Canada Limited and Can Workers' Federal Unions of the Canadian Labour Congress; Hotchkiss grievance*, November 23, 1978. Majority: O'Shea, Herlihy — 11 pages; dissent: Biggs. (56)

Carelessness: grievor destroying shaft by failure to properly secure it in milling machine: grievor apprised of need for special care; grievance dismissed. *Re Westinghouse Canada Limited and United Electrical, Radio and Machine Workers of America, Local 504; Vucic grievance*, November 16, 1978. Majority: Weatherill, Kacur — 5 pages; dissent: Greenwood. (57)

Disobedience — failing to submit to search procedure when requested to do so: company requiring security arrangements because of work with precious metals; grievance dismissed. *Re Johnson Matthey and Mallory Limited and Precious Metal Workers Union, Local 24739; Upton grievance*, November 10, 1978. Palmer, Weisbach, Murray — 10 pages; addendum: Weisbach — 1 page. (58)

Grievor requesting note regarding attendance be withdrawn from file: whether note informational or form of discipline; grievance not arbitrable. *Re Worthington Canada Limited and International Association of Machinists and Aerospace Workers, Local 1673; McGlinchey grievance*, October 30, 1978. Hinnegan, Jardine, Carrier — 4 pages. (59)

Grievor using abusive language toward management representative following grievance meeting: whether grievor subject to discipline while acting in his capacity as local union chairman; grievance dismissed. *Re The St. Lawrence Seaway Authority and Canadian Brotherhood of Railway, Transport and General Workers; Smith grievance*, October 23, 1978. Brown — 15 pages. (60)*

Horseplay and fighting: five day suspension; grievance dismissed. *Re Coca-Cola Ltd. and Soft Drink Workers Joint Local Executive Board; Outridge grievance*, November 27, 1978. Burkett — 7 pages. (61)

Idle conduct: conflicting testimony; whether just cause; grievance allowed. *Re Scarborough Centenary Hospital Association and Canadian Union of Public Employees, Local 1320; Zolis grievance*, November 9, 1978. Schiff, Simon, Varty — 5 pages. (62)

Incompetence — Registered Nurse: grievor selecting priorities for urgent tasks which left medication error undiscovered; grievance allowed. *Re Oshawa General Hospital and Ontario Nurses' Association; Mellor grievance*, November 10, 1978. Majority: Palmer, Walsh — 6 pages; dissent: Dixon. (63)

Insubordination — whether order clearly and properly given: grievance allowed. *Re Coca-Cola Ltd. and Soft Drink Workers Joint Local Executive Board; Earl grievance*, November 1, 1978. Brown — 14 pages. (64)

Medically related absence — illness questionable: whether employer can order grievor to submit to a company doctor's medical examination; grievance allowed. *Re Monarch Fine Foods Co. Ltd. and Milk and Bread Drivers, Dairy Employees, Caterers and Allied Employees, Local 647; Gogna grievance*, November 17, 1978. Majority: M.G. Picher, Thomson — 11 pages; dissent: MacDonald — 3 pages. (65)*

Picketing — off-duty employees: no legal strike in progress; whether conduct designed to cause other employees not to report for work, or known to reasonably and probably to have this result; grievance dismissed. *Re Bell Canada and Communications Workers of Canada; Skelly and Maki grievances*, November 24, 1978. Springate — 13 pages. (66)*

Progressive discipline: whether verbal warning precludes written record; grievance allowed in part. *Re Dominion Textile Ltd., Long Sault and United Textile Workers of America, Local 468; St. Denis and Mazerolle grievances*, October 23, 1978. McCaughey, Bouchard, Mills — 10 pages. (67)

Refusal to work — health reasons: whether grievor's belief that duties endangered his health reasonable; grievance dismissed. *Re The Metropolitan Board of Commissioners of Police and The Metropolitan Toronto Police Association; McAteer grievance*, November 22, 1978. Brent — 16 pages. (68)

Transfer: lateral transfer alleged to be motivated by intent to discipline; grievance allowed. *Re Chicago Rawhide Products Canada Limited and United Automobile Workers, Local 397; MacLeod grievance*, November 15, 1978. Brown — 13 pages. (69)

Unsatisfactory production because of excessive breaktime: collective agreement and company practice unclear on permissible rest periods; grievance allowed. *Re Canadian Appliance Manufacturing Company Limited and United Steelworkers of America, Local 3129; Bartolo grievance*, October 12, 1978. Baum — 13 pages. (70)

Verbal abuse of supervisor — no physical violence: some provocation by supervisor; previous good record; suspension reduced. *Re BP Oil Limited, Trafalgar Refinery and Oil, Chemical and Atomic Workers International Union, Local 9-953; Reed grievance*, November 7, 1978. Majority: Palmer, Edwards — 29 pages; dissent: Healy — 2 pages. (71)

Estoppel

Past practice — clause requiring appointment of acting lead hands by seniority not enforced by union; whether estoppel arises; grievance allowed. *Re St. Mary's Cement Company and United Steelworkers of America, Local 12219; Fry grievance*, August 30, 1978. Majority: Palmer, McGraw — 7 pages; dissent: Healy — 2 pages. (72)

Grievance Procedure

Formal requirements — incumbent not adequately notified of grievance in which union alleging incumbent was improperly awarded promotion over grievor; grievance not arbitrable. *Re La Verendrye General Hospital and Canadian Union of Public Employees; unnamed grievance*, November 10, 1978. Lunney, Simpson, Holt — 7 pages. (73)*

Illness

Extended leave of absence: grievor offered lighter work in lieu of previous job; grievor willing to accept lighter work only until able to perform former job; whether employer must hold former job indefinitely; grievance dismissed. *Re Mohawk College and Ontario Public Service Employees' Union; Van Os grievance*, October 31, 1978. Majority: O'Shea, Farr — 15 pages; dissent: Millard — 22 pages. (74)

Re-employment of handicapped worker: criteria to determine if ability to do work exists; whether employer has duty to accommodate employee if no suitable job exists; grievance dismissed. *Re Sidbec-Dosco Limited and United Steelworkers of America, Local 5629; policy grievance*, November 15, 1978. Majority: O'Shea, Churchill-Smith — 15 pages; dissent: Grasso — 4 pages. (75)

Job Posting

Requirements of job — whether reasonably related to job function: effect of not informing applicants of job criteria; grievance allowed in part. *Re Victoria Hospital Corporation and London and District Service Workers' Union, Local 220; Sealy grievance*, November 21, 1978. Baum, Switzman, Roberts — 14 pages. (76)*

Job Vacancy

Temporary vacancy: job classification of employee differs from assigned temporary work; whether this constitutes a vacancy in the classification; grievance dismissed. *Re Chromasco Limited and United Steelworkers of America, Local 4632; policy grievance*, November 7, 1978. Brown, Charbonneau, Massicotte — 8 pages. (77)

Transfer — employee transferred to store supernumerary to requirements: part-time employees entitled to bid on full-time jobs; whether vacancy created; grievance dismissed. *Re Dominion Stores Limited and Retail, Wholesale and Department Store Union, Local 414; Cox grievance*, November 10, 1978. Majority: Weatherill, White — 7 pages; dissent: Barron. (78)*

Lay-Off

Company advising employees not to report to work due to inclement weather: whether company action amounting to lay-off; grievance dismissed. *Re Northern Telecom Limited and United Electrical, Radio and Machine Workers of America, Local 531; Woods grievance*, May 12, 1978. J.L. Roberts — 9 pages. (79)

Overtime Pay

Entitlement — grievors attending "in service" lecture on fire safety past their normal quitting time; grievance allowed. *Re Little's Nursing Home (Tecumseh) Limited and Service Employees' Union, Local 210; unnamed grievances*, November 8, 1978. Brent, Hughes, Docherty — 8 pages. (80)

Entitlement — two shifts encroached on 24 hour period forming one calendar day: claim was for overtime pay for period over eight hours worked; grievance dismissed. *Re Durham Regional Board of Commissioners of Police and The Durham Regional Police Association; association grievance*. See (15), *Supra*. (81)

Probationary Employee

Discharge — whether probation period begins at date of hiring or date duties commence: notice; grievance dismissed. *Re Students' Union of Ryerson Polytechnical Institute and Canadian Union of Public Employees, Local 1281; Gallus grievances*, October 17, 1978. Majority: Brunner, Noonan — 10 pages; dissent: Symes — 3 pages. (82)

Probationary period — calculation: whether partial days and overtime included; grievance arbitrable. *Re Inmont Canada Limited and Canadian Chemical Workers Union, Local 25; Hnat grievance*. See (6), *supra*. (83)

Promotion

Apprenticeship job — employer awarding position in apprenticeship program to junior employee: apprentice jobs not within classifications covered by agreement; grievance dismissed. *Re Scarborough General Hospital and Canadian Union of Public Employees; Robinson grievance*, November 16, 1978. Weatherill, Browne, Sanderson — 6 pages. (84)

Qualifications: company awarding job to junior employee: whether grievor more qualified to fill position; grievance dismissed. *Re The Quaker Oats Company of Canada Limited and Canadian Food and Allied Workers, Local P-293; McConnachie grievance*, October 31, 1978. Majority: Brown, Storie — 22 pages; dissent: Leahy. (85)

Qualifications — reasonableness of criteria for judging “qualified”: grievance allowed. *Re Dominion Textile Ltd., Long Sault and United Textile Workers of America, Local 468; Bough grievance*, October 23, 1978. Majority: McCaughey, Bouchard — 15 pages; did not concur: Mills — 2 pages. (86)

Qualifications — whether relatively equal: selection process not strictly followed; grievance allowed in part. *Re County of Bruce, The Corporation of and Canadian Union of Public Employees, Local 1654; Carter grievance*, November 22, 1978. Brunner, Magwood, Whitney — 20 pages; addendum: Whitney — 1 page. (87)

Qualifications — whether testing an appropriate and correct selection procedure; grievance dismissed. *Re American Standard and Local 231 of The International Brotherhood of Pottery and Allied Workers; Marino grievance*, November 24, 1978. Curtis, Armstrong, Healy — 10 pages. (88)

Right of employee not currently in bargaining unit to apply: calculation of seniority; whether period of part-time employment included; grievance allowed. *Re Scarborough Centenary Hospital Association and Canadian Union of Public Employees, Local 1320; de Freitas grievance*, November 22, 1978. Schiff, Simon, Varty — 11 pages. (89)*

Tenure of university professor: whether fulfillment of requirements for tenure under terms of collective agreement; grievance allowed. *Re The University of Ottawa and The Association of Professors of The University of Ottawa; McCaughey grievance*, October 31, 1978. Kruger, Campbell, MacKay — 57 pages. (90)

Recall

Reclassification during lay-off — grievors unable to meet standards of new classification: grievance dismissed. *Re Canron Limited and International Molders' and Allied Workers' Union, Local 28; Puglielli and Tuccitto grievances*, November 22, 1978. Rose — 9 pages. (91)

Reporting Pay

Entitlement: no work available due to power failure; whether shift had already started; grievance allowed. *Re Richards-Wilcox of Canada Limited and International Association of Machinists and Aerospace Workers, Local 756; group grievance*, November 15, 1978. Majority: O'Connor, Wren — 6 pages; dissent: Adamson. (92)

Refusal to operate equipment because unsafe: whether “unable to commence work due to reasons beyond his control”; grievance allowed. *Re E.B. Eddy Forest Products Ltd. and The Lumber and Sawmill Workers' Union, Local 2693 of United Brotherhood of Carpenters and Joiners of America; Fournier grievance*, November 1, 1978. Brunner, Wren, Noonan — 13 pages. (93)

Snowstorm causing high absenteeism: shift cancelled; whether lack of work beyond employer's control; grievance dismissed. *Re General Freezer Limited and United Steelworkers of America, Local 7455; McClelland, Montecalvo and Kanenburg grievances*, November 7, 1978. Weatherill — 6 pages. (94)

Retirement

Grievor alleging mandatory retirement discriminatory and in violation of collective agreement provision against discrimination on grounds of age; grievance dismissed. *Re York University and York University Staff Association; Shaw grievance*, November 2, 1978. Majority: Brent, Whittaker — 17 pages; dissent: Hasson — 3 pages. (95)*

Seniority

Trade seniority list: whether individual becomes “tradesperson” at date of hiring or at date of commencement of Tradesman A rate of pay; grievance dismissed. *Re TCF Canada Limited and Amalgamated Clothing and Textile Workers' Union, Local 1332; Benoit grievance*, October 30, 1978. Brent — 10 pages. (96)

Sick Leave

Sick leave credits — calculation: whether absence in audit period precludes any credit for that period; grievance allowed. *Re Town of Haldimand, The Corporation of and Canadian Union of Public Employees, Local 1591; Van Sickie and Schweyer grievances*, October 31, 1978. Kennedy, Richards, McCarthy — 8 pages. (97)

Sick Pay

Grievor on weekly indemnity claiming entitlement to increased payments under terms of subsequently negotiated agreement: company alleging amount of indemnity determined by contract in effect at commencement of disability; grievance dismissed. *Re National Grocers Company Limited and Retail, Wholesale and Department Store Union, Local 414; Sibbald grievance*, October 31, 1978. Majority: Kennedy, von Veh — 11 pages; dissent: Spaxman — 2 pages. (98)*

Vacation

Scheduling: past year's vacation extended into present year; whether that constitutes a vacation for the present year; grievance dismissed. *Re Indal Products Limited, Door and Window Division and United Steelworkers of America, Local 2729; Guida grievance*, November 6, 1978. Brent, Hart, Sargeant — 4 pages. (99)

Vacation Pay

Calculation — grievor claiming rate applicable to full-time employees: grievor made full-time employee after calculation period; grievance dismissed. *Re VS Services Limited (Food and Management Services) at the Queen Elizabeth Hospital and The Workers' Union of Queen Elizabeth Hospital; Cappelletto grievance*, November 15, 1978. Brown — 11 pages. (100)

Calculation — maternity leave during calculation period: whether vacation pay entitlement based on service or working time; grievances allowed. *Re The Mississauga Public Library Board and Canadian Union of Public Employees, Local 1989; Marques and Chan grievances*, October 22, 1978. Majority: Baum, Wren — 11 pages; dissent: Farrar — 5 pages. (101)

Entitlement on resignation: whether whole year's vacation pay vests on January 1 or whether entitlement *pro rata*; grievance dismissed. *Re Durham Regional Board of Commissioners of Police and The Durham Regional Police Association; association grievance*. See (15), *supra*. (102)

Wages

Breakdown or delay time pay — calculation when breakdown occurs before vehicles leave employer's premises; grievance allowed. *Re Frederick Transport Limited and Canadian Transportation Workers Union, Local 199; Arn and Jones grievances*, October 17, 1978. Ianni, Nelson, Howe — 6 pages. (103)

Court time pay for police officers — men in question were off-duty and were facing charges against themselves; grievance dismissed. *Re Durham Regional Board of Commissioners of Police and The Durham Regional Police Association; association grievance*. See (15), *supra*. (104)

Merit pay — entitlement: grievor received temporary promotion and employer reduced merit pay to make total pay unchanged; grievance allowed. *Re The Canadian Press Broadcast Limited and Canadian Wire Service Guild, Local 213; MacDonald grievance*, November 14, 1978. Majority: M.G. Picher, Nelson — 11 pages; dissent: Noonan — 7 pages. (105)

Rates on promotion — grievor's promotional increase lessened by alteration in wage policies applicable to promotion situation: future result would be greater fairness for all; grievance dismissed. *Re The Metropolitan Board of Commissioners of Police and The Metropolitan Toronto Police Association; Clute grievance*, November 13, 1978. Brent — 13 pages. (106)

Welfare Plans

Death benefit — payment to employee's beneficiary based on accumulated sick leave under terms of collective agreement: whether ultra vires due to provisions of The Municipal Act; grievance dismissed. *Re The Public Utilities Commission of Coburg and Canadian Union of Public Employees, Local 25; Gallagher grievance*, October 24, 1978. Teplitsky — 5 pages. (107)

Work Assignment

Elimination of job — union claims tool crib attendants' duties now done by supervisors; grievance dismissed. *Re American Can of Canada Limited and United Paperworkers International Union, Local 548; union grievance*, November 16, 1978. Bicknell — 9 pages. (108)

Performance of bargaining unit work by outside personnel — security employees given responsibility for carry-on baggage at airports rather than passenger agents; grievance allowed. *Re Air Canada and Canadian Airline Employees Association; union grievance*, November 10, 1978. Brown — 28 pages. (109)

Temporary assignment — whether employee performed work in grievor's classification longer than "a short period of time" as permitted by agreement; grievance dismissed. *Re Richards-Wilcox of Canada Limited and International Association of Machinists and Aerospace Workers, Local 756; Lang grievance*, November 15, 1978. O'Connor, Wren, Adamson — 6 pages. (110)

The following awards in interest arbitrations under *The Hospital Labour Disputes Arbitration Act* were also filed with the Commission during the month of November, 1978:

Algonquin Nursing Home Limited at Mattawa and Canadian Union of Public Employees, Local 1465, McCulloch, Walsh — 60 pages; dissent: Tobias — 1 page.

Corporation of the County of Middlesex (Strathmere Lodge) and London and District Service Workers' Union, Local 220, McCulloch, Walsh, Hockin — 3 pages.

Regional Municipality of Peel and Canadian Union of Public Employees, (Employees at Sheridan Villa), Rose, Filion — 8 pages; dissent: Switzman.

Rockcliffe Nursing Home Limited and Ontario Nurses' Association (full-time and part-time registered and graduate nurses), Brunner, Walsh — 21 pages; addendum: Walsh — 1 page; dissent: Furlong — 3 pages.

Salvation Army Grace Hospital, Windsor and Ontario Public Service Employees Union, Samuels — 12 pages; dissent: Tirrell — 2 pages; dissent: Burnell — 2 pages.

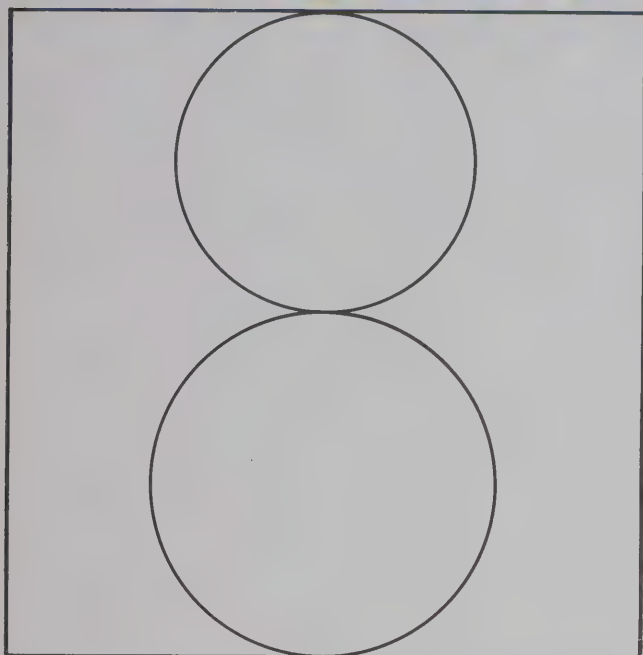
Victoria Hospital Corporation, London and Ontario Nurses' Association (part-time employees), Davidson, Sanderson, Walsh — 7 pages.

Filing Awards

The attention of chairmen of boards of arbitration and sole arbitrators is drawn to the provision of Section 6(2) of the Regulation, which reads: 6.—(2) Every arbitrator shall, within ten days of issuing an award, file a copy thereof with the Commission. This provision would apply to all arbitrators approved under The Ontario Labour-Management Arbitration Commission Act and regardless of whether they were appointed as chairmen or sole arbitrators pursuant to the Act, by the parties or by the Minister.

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Monthly Bulletin



The Ontario Labour-Management
Arbitration Commission

His Honour Judge Walter Little, Chairman
Dorothy M. Johnson, Registrar

Ontario Ministry of Labour
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Hon. Robert Elgie, M.D., Minister
T.E. Armstrong, QC, Deputy Minister

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Awards

The following awards were filed with the Commission during the month of December, 1978, under Section 6(2) of Ontario Regulation 635, R.R.O. 1970.

The summary was prepared at the Faculty of Law, Queen's University, under the supervision of C.G. Simmons, B.A., B.C.L., LL.M., and K.P. Swan, B.Eng., LL.M.

* Indicates awards to be reported in full or in part in *Labour Arbitration Cases*.

Arbitrability

Probationary employees — discharge grievances: whether arbitrable as union grievance as opposed to individual grievances; whether clause prohibiting probationary employees from grievance procedure contrary to s.37 of *Labour Relations Act*; grievances arbitrable. *Re Toronto Star Newspapers Limited and The Toronto Newspaper Guild, Local 87; Azmi, et al grievances*, November 23, 1978. Prichard — 30 pages. (1)*

Union dues — successor union: dues deductions held employer subject to court action; whether grievance seeking payment under prior collective agreement arbitrable; interim directions issued. *Re Cyanamid of Canada Limited and International Chemical Workers Union, Local 165; union grievance*, December 4, 1978. Majority: Kennedy, Gray — 9 pages; dissent: Sloan. (2)

Bargaining Unit

Scope: grievors claiming employer improperly moved them from full-time bargaining unit to part-time status; grievance allowed. *Re Hillsdale Nursing Home and Boot and Shoe Workers' International Union; Shearer and LaBrash grievances*, November 13, 1978. Majority: Palmer, Evans — 9 pages; dissent: Baker. (3)

Bereavement Leave

Entitlement: effect of grievor's divorce on status of "father-in-law" of ex-spouse's parent; grievance dismissed. *Re Car Carrier Division of the Motor Transport Industrial Relations Bureau of Ontario (Inc.) and Teamsters Union, Local 938 and Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 880 and Transport Drivers Warehousemen and Helpers Union, Local 106; union grievance.* December 8, 1978. O'Shea — 5 pages. (4)

Classification

Re-classification — classification abolished in creation of new system: whether change unreasonable or arbitrary; grievances dismissed. *Re American Can of Canada Limited and Printing Specialties and Paper Products Union; group grievance,* December 22, 1978. Majority: Brent, King — 7 pages; dissent: Tate — 2 pages. (5)

Collective Agreement

Pensions — mandatory pension plan not a part of collective agreement: employees obliged to join pension plan as condition of employment; whether contrary to collective agreement; grievance allowed. *Re Gray Forging and Stampings Limited and I.U.E., Local 557; policy grievance,* October 22, 1978. Gorsky, Aslin, Glass — 9 pages. (6)*

Damages

Duty to mitigate: effect of income from part-time job held prior to discharge during period of discharge; effect of lost overtime; further directions issued. *Re Cabot Carbon of Canada Limited and Oil, Chemical and Atomic Workers International Union, Local 9—14; Wilson grievance,* December 20, 1978. Supplementary award. Majority: Hinnegan, Rogers — 8 pages; dissent in part: McNaughton — 2 pages. (7)

Demotion

Non-disciplinary demotion: criteria for appointment of "Major Head" in school department; interpretation of "the equivalent of the full-time of two teachers is used in teaching the course of study"; effect of past practice; grievance allowed. *Re Lambton County Board of Education and Ontario Secondary School Teachers' Federation; Kostaniuk grievance,* December 1, 1978. Brandt — 9 pages. (8)

Discharge

Absence without leave: grievor failing to notify company of absence due to incarceration following conviction of a criminal offence; grievance dismissed. *Re Steel Company of Canada Limited and United Steelworkers of America, Local 1005; Costello grievance,* November 27, 1978. Majority: Rayner, Storie — 14 pages; dissent: Warrian. (9)*

Absence without leave: grievor failing to return from leave of absence on date specified by employer; whether extension of leave justified by legitimate reason; grievance dismissed. *Re Monsanto Canada Limited and Amalgamated Clothing and Textile Workers' Union, Greater Toronto Textile Joint Board, Local 1438; Dhaliwal grievance,* November 27, 1978. Majority: O'Shea, Churchill-Smith — 14 pages; dissent: Hainsworth. (10)

Alcoholic beverages: grievor drinking intoxicants while in uniform and while on employer's property; whether provisions concerning offence mandate specific penalty; reinstatement without compensation. *Re Toronto Transit Commission and Amalgamated Transit Union, Local 113; MacLean grievance,* December 8, 1978. Majority: Teplitsky, Wren — 14 pages; dissent: Filion — 5 pages. (11)

Assault — grievor assaulting management personnel and using threatening and abusive language; grievance dismissed. *Re Main Lumber Company and United Brotherhood of Carpenters and Joiners of America, Local 2679; Brillinger grievance,* December 19, 1978. O'Shea — 13 pages. (12)

Assault: grievor using abusive language and assaulting supervisor; whether assault provoked; grievance dismissed. *Re Oliver-MacLeod Limited and United Steelworkers of America; Martin grievance,* November 27, 1978. Majority: Rayner, Gray — 7 pages; dissent: Curtis. (13)

Assault — provocation: grievor provoked by fellow employee with history of trouble-making; grievor picked up pipe in response to the provocation; suspension substituted. *Re IKO Industries Limited and United Steelworkers of America; Higgins grievance,* December 7, 1978. Majority: Betcherman, Rao — 5 pages; dissent: White — 3 pages. (14)

Assault — striking and injuring fellow employee: racial slur as provocation; effect of grievor's lack of frankness; suspension substituted. *Re Domglas Limited and United Glass and Chemical Workers of North America and its Local 260; Singh grievance,* December 18, 1978. Majority: Burkett, Currie — 12 pages; addendum: McNaughton — 1 page. (15)

Carelessness — damages to company property resulting: culminating incident; reinstatement without compensation. *Re Rayco Stamping Products Limited and Christian Labour Association of Canada; Djurdjevic grievance,* December 7, 1978. O'Connor — 4 pages. (16)

Carelessness — grievor's previous driving record increased insurance premiums and jeopardized insurability of employer; reinstatement with lay-off status. *Re Watson Concrete Products Limited and Teamsters, Local 380; Oulds grievance,* November 21, 1978. Majority: McCulloch, Kobryn — 10 pages; dissent: Howe — 5 pages. Exhibits — 5 pages. (17)

Conflict of interest — working for a competitor: whether a breach of employee's duty of fidelity; knowledge of company policy; reinstatement without compensation. *Re City Parking Holdings Limited and Service Employees Union, Local 204; Butt grievance*, December 13, 1978. Majority: Hinnegan, Mitchnick — 9 pages; dissent: Acton. (18)

Culminating incident: weight of past incidents not taken to arbitration; grievance dismissed. *Re Bundy of Canada Limited and International Union of United Automobile Workers, Local 1285; O'Neill grievance*, December 4, 1978. O'Shea — 23 pages. (19)

Dishonesty: company alleging grievor caused number of unordered accessories to be attached to automobile built for him in company's plant; grievance dismissed. *Re The Ford Motor Company of Canada Limited and International Union of United Automobile Workers, Local 707; Doherty grievance*, November 29, 1978. Palmer — 9 pages. (20)

Drinking while on duty: grievors failing to observe company rule re abstention from alcohol prior to driving bus; Maw, Gibbon grievances dismissed; Wagenaar grievance allowed in part. *Re Trailways of Canada Limited and Canadian Brotherhood of Railway, Transport and General Workers; Maw, Gibbon and Wagenaar grievances*, November 30, 1978. Springate — 20 pages; partial dissent: Nelson — 4 pages; partial dissent: Burke — 1 page. (21)

Drug usage— grievors smoking marijuana in company parking lot during lunch break; suspension substituted. *Re The Great Atlantic and Pacific Company Limited and Retail, Wholesale and Department Store Union, Local 414; Hiscox, Lynch grievances*, December 20, 1978. Majority: Kruger, Spaxman — 5 pages; dissent: Dinsdale. (22)

Falsification of company records: seriousness of offence; possibility of financial benefit; grievance dismissed. *Re Coca-Cola Limited and Canadian Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers, Local 381; Tirabassi grievance*, November 2, 1978. McLaren — 10 pages. (23)

Illegal strike — participation in illegal work stoppages: whether penalties imposed in a discriminatory or random manner; Brunini grievance dismissed; other grievances allowed in part. *Re Transit Windsor and Amalgamated Transit Union, Local 616; Adam et al grievances*, December 11, 1978. Hinnegan — 22 pages; partial dissent: Evans — 1 page; partial dissent: Oana — 9 pages. (24)

Innocent absenteeism: effect of collective agreement language providing for sick leave of absence for a minimum of five years; grievance allowed. *Re The Budd Automotive Company of Canada Limited and International Union of United Automobile Workers and Local 1451; Bostrom grievance*, December 11, 1978. O'Shea — 14 pages. (25)

Innocent absenteeism: grievor not incapable of achieving reasonable standard of attendance; grievor not fully appreciating consequences of absenteeism; reinstatement without compensation. *Re Livingston Industries Limited and International Woodworkers of America, Local 2-89; McKee grievance*, December 21, 1978. Majority: Haladner, Smiley — 14 pages; dissent: McNaughton — 1 page. (26)

Insubordination and theft: threatening supervisor, abusive language and throwing material at supervisor; degree of insolent behaviour which will justify discharge; reinstatement without compensation. *Re Dominion Forge Company Limited and Local 240, Dominion Forge Unit, United Auto Workers; Hunt grievance*, December 16, 1978. Brandt — 23 pages. (27)*

Insubordination — verbal abuse and assault of foreman: culminating incident; provocation by foreman as mitigating circumstance; reinstatement without compensation. *Re Reynolds Aluminum Containers Limited and International Moulders and Allied Workers' Union, Local 28; Noel grievance*, December 11, 1978. Brown — 13 pages. (28)

Laches — five month delay in discipline: strike in progress at time of adverse conduct; bombs planted on company premises; grievance dismissed. *Re The Becker Milk Company Limited and Milk and Bread Drivers, Dairy Employees, Caterers and Allied Workers, Local 647, Affiliated with the International Brotherhood of Teamsters; Cramb grievance*, October 30, 1978. McLaren — 17 pages. (29)

Possession of stolen property: discovery of company property in grievor's locker; no satisfactory explanation; grievance dismissed. *Re Fiberglas Canada Limited and Oil, Chemical and Atomic Workers' International Union, Local 9-14; Atkinson grievance*, December 8, 1978. Hinnegan — 4 pages. (30)

Procedural requirements — change of grounds: employer advancing grounds of "just cause" in addition to grounds mentioned in discharge letter; whether employer restricted to grounds advanced originally; objection dismissed. *Re Steel Company of Canada Limited and United Steelworkers of America — see (9) supra*. (31)*

Quit alleged: whether resignation valid if union steward not present at meeting between grievor and employer as required by collective agreement; grievance allowed. *Re The Great Atlantic and Pacific Company of Canada Limited and Canadian Food and Allied Workers, Locals 175 and 633, Chartered by the Amalgamated Meat Cutters and Butcher Workmen of North America; Roketta grievance*, December 21, 1978. Majority: Brown, Simon — 23 pages; dissent: Cook — 2 pages. (32)

Redundancy — qualifications: whether grievors qualifications superior to those to whom comparison was made; grievance allowed. *Re The Norfolk Board of Education and Ontario Secondary School Teachers' Federation, District 47; Lee grievance*, December, 1978. Majority: Devlin, Cazabon — 29 pages; dissent: McNern — 1 page. (33)*

Refusal to work overtime: refusal of Saturday work because of religious beliefs; whether overtime compulsory; grievance dismissed. *Re Arvin Automotive of Canada Limited and United Steelworkers of America; Abihira grievance*, November 28, 1978. Barton, Fagan, Murray — 11 pages. (34)*

Sleeping on job: culminating incident; grievance dismissed. *Re Reed Limited, Pigments Division and International Chemical Workers Union, Local 880; Elliott grievance*, December 11, 1978. Majority: Weatherill, Easdale — 13 pages; dissent: Mutimer. (35)

Violent conduct — grievor destroying company property and assaulting another employee despite previous warnings concerning such outbursts; grievance dismissed. *Re American Standard and International Brotherhood of Pottery and Allied Workers, Local 231; Russo grievance*, December 21, 1978. Majority: Curtis, Healy — 12 pages; dissent: Armstrong — 1 page. (36)

Discipline

Absence without leave: grievor failing to notify supervisor of intended absence due to illness prior to the beginning of shift; whether explanation offered satisfactory; grievance dismissed. *Re Noranda Mines Limited and Canadian Union of Base Metal Workers; Williams grievance*, December 4, 1978. Brown — 11 pages. (37)

Fighting — off-duty conduct: altercation between two employees outside company premises and after working hours; relationship of conduct to workplace; grievance dismissed. *Re Aluminum Goods, Division of Alcan Canada Products Limited and United Steelworkers of America, Local 2858; Prescott and Dale grievance*, December 19, 1978. Majority: Kennedy, Wakely — 15 pages; dissent: Robinson. (38)

Insubordination — abusive and defiant language: grievance dismissed. *Re Charles Wilson Limited and Soft Drink Workers Joint Local Executive Board; Grant grievance*, December 11, 1978. Majority: Haladner, McKillop — 10 pages; partial dissent: Green — 1 page. (39)

Insubordination: employee loitering and not performing assigned duties; abusive language; grievance dismissed. *Re Reed Limited, Pigments Division and International Chemical Workers Union, Local 880*. See (35) *supra*. (40)

Insubordination — grievor addressing supervisor in abusive manner: grievor making no apology and maintaining defiant attitude; grievance dismissed. *Re City of Kitchener, The Corporation of and Canadian Brotherhood of Railway, Transport and General Workers, Local 304; Kropf grievance*, December 20, 1978. Majority: O'Shea, Sims — 9 pages; dissent: Bruder. (41)

Insubordination — illegal order: grievors refusing to sign forms authorizing employer to deduct from their pay cost of tools lost or damaged through negligence or misuse; grievances allowed. *Re F.B.M. Distillery Company Limited and Canadian Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers, Local 304; Moore and Crane grievances*, December 18, 1978. Arthurs — 9 pages. (42)*

Insubordination — use of profane language in the presence of a supervisor: no direct affront intended; lesser suspension substituted. *Re Ottawa General Hospital and Canadian Union of Public Employees, Local 1657; Lalonde grievance*, December 4, 1978. Majority: Weatherill, Sirois — 7 pages; dissent: Henry — 3 pages. (Award in French) (43)

Insubordination — verbal abuse of supervisor: breach of dress regulations; intoxication; grievance dismissed. *Re Air Canada and Canadian Airline Employees' Association; MacLelland grievance*, November 28, 1978. Brown — 18 pages. (44)

Leaving work without permission: grievor absenting himself from second half of work shift without supervisor's permission; grievance dismissed. *Re Webster Air Equipment Limited and International Moulders' and Allied Workers Union, Local 49; Johnson grievance*, December 5, 1978. O'Shea — 12 pages. (45)

Negligence — accident while operating lift truck: whether accident result of negligence; grievance allowed. *Re True Temper Canada Limited and United Steelworkers of America, Local 2853; Podrebarac grievance*, December 18, 1978. Weatherill — 8 pages. (46)

Negligence — unsafe act causing damage to company property: mitigating factors; lesser suspension substituted. *Re Consolidated Bathurst Packaging Limited and International Woodworkers of America, Local 2-337; Jacques grievance*, December 15, 1978. Majority: Burkett, Nelson — 7 pages; dissent: Rogers — 3 pages. (47)

Union activity — internal union conflict: grievor circulating letter in plant critical of union leadership contrary to specific management instructions; grievance allowed. *Re Lake Ontario Steel Company Limited and United Steelworkers of America, Local 6571; McLean grievance*, November 13, 1978. Majority: Abbott, McAuley — 14 pages; dissent: McKillop — 2 pages. (48)*

Unsafe act — grievor and his work partner bypassing safety switch mechanism: safety practice not strictly enforced; written warning substituted. *Re Procor Limited and International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, Local 75; Volpi grievance*, December 11, 1978. O'Shea, Green, Glass — 18 pages. (49)

Estoppel

Seniority — employer calculating initial seniority list in error: grievors claiming right to rely upon first list; grievances dismissed. *Re Board of Education for the Borough of York and Women Teachers Association of York; Ansley, et al grievances*, November 10, 1978. Ellis, Posen, Cook — 14 pages. (50)

Evidence

Privilege — solicitor-client privilege: solicitor for employer wished to question grievor as to whether union's solicitor had advised him to dress up for the hearing; whether solicitor-client privilege applies; evidence not admissible. *Re City of Hamilton and Canadian Union of Public Employees, Local 167; Southern grievance*, December 12, 1978. Teplitsky — 5 pages. (51)*

Grievance Procedure

Interrogation of employees — six individuals involved: policy grievance or individual grievances; policy grievance arbitrable. *Re The Toronto Western Hospital and Canadian Union of Public Employees, Local 1744; policy grievance*, December 12, 1978. Majority: Kennedy, Simon — 9 pages; dissent: Farrar. (52)

Illness

Return to work: grievor prevented from returning to work after lay-off due to injury; grievor failing to comply with medical procedures to ensure fitness to work; grievance dismissed. *Re Macdonalds Consolidated Limited and Warehousemen and Miscellaneous Drivers Union, Local 419; Green grievance*, December 15, 1978. Majority: Burkett, Brady — 17 pages; dissent: Floyd; addendum: Brady — 3 pages. (53)

Incentive Pay

Change of standards — standards changed on receipt of new equipment: change of standards only possible within one year of major revisions of equipment; whether major revision had occurred on previous machine changes; grievance allowed. *Re International Harvester Company of Canada Limited and United Steelworkers of America, Local 2868; group grievance*, November 20, 1978. Graham, Sharratt, Edwards — 4 pages. (54)

Job Evaluation

New jobs — whether evaluation of new jobs properly done: grievance dismissed. *Re Slater Products, Division of Slater Steel Industries Limited and Local 3505 of United Steelworkers of America; union grievance*, December 8, 1978. Graham — 3 pages. (55)

Job Posting

Employer decision to interchange two employees in different classifications: whether contrary to provisions concerning job posting; grievance allowed. *Re The Wentworth County Board of Education and Canadian Union of Public Employees, Local 1572; union grievance*, December 13, 1978. Majority: O'Shea, Dowell — 10 pages; dissent: MacDermid — 2 pages. (56)

"Newly-established" job: whether maintenance helper duties constitute newly-established job or work assignment; grievance dismissed. *Re Molson's Brewery Limited and Canadian Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers of America, Local 306; policy grievance*, October 31, 1978. McLaren — 10 pages. (57)

Qualifications: whether grievor had necessary experience, aptitude and ability for job posted; grievance allowed. *Re Long Manufacturing Division, Borg-Warner (Canada) Limited and International Association of Machinists and Aerospace Workers, Local 2330; Bradshaw grievance*, November 29, 1978. O'Shea, Boehmer, Jardine — 9 pages. (58)

Lay-Off

Guarantee against lay-off: union obtained guarantee related to changes in garbage collection methods; lay-offs eleven months later at end of winter outdoor rink program; grievance dismissed. *Re City of Kingston, Corporation of and Canadian Union of Public Employees, Local 109; group grievance*, November 30, 1978. Majority: Simmons, Warmington — 15 pages; did not concur: Arsenault. (59)

Qualifications to do available work: point in time for comparison of workers; grievances dismissed. *Re Alcan Products Limited and United Steelworkers of America, Local 6922; Barker, Brown and Gonsalves grievances*, November 29, 1978. Majority: Shime, Phelps — 6 pages; dissent: Hall. (60)

Lock-Out

Construction lock-out: slowness in settling grievance rendering doubtful value of working on a qualifying day for holiday pay; no company action to prevent employees from working; grievance dismissed. *Re Canadian General Electric Company Limited and United Electrical, Radio and Machine Workers of America; group grievance*, October 31, 1978. Teplitsky, More, Williamson — 3 pages. (61)

Overtime

Entitlement: whether the temporary absence of another employee constituted a "vacancy" requiring the distribution of overtime; grievance dismissed. *Re Metropolitan Toronto, The Municipality of and Canadian Union of Public Employees, Toronto Civic Employees Union, Local 43; Manning grievance*, November 17, 1978. Majority: Brunner, Murray — 12 pages; dissent: Tate — 3 pages. (62)

Holidays — regular hours worked on "lieu day" of designated holiday: whether entitled to overtime pay; grievances dismissed. *Re Silverwood Dairies and Canadian Union of Operating Engineers, Local 101; group grievance*, December 14, 1978. Majority: Weatherill, Salmon — 9 pages; dissent: Chyczij — 3 pages. (63)

Improper assignment: missed overtime opportunities; proper remedy, grievance allowed. *Re Dominion Stores Limited and Retail, Wholesale and Department Store Union, Local 579; Fillaton and Belcourt grievances*, December 1, 1978. Majority: O'Shea, Lachance — 12 pages; dissent: White — 2 pages. (64)*

Procedure

Particulars — employer requesting order for particulars: union not objecting; order granted. *Re O and K Orenstein and Koppel Canada Limited and International Association of Machinists and Aerospace Workers, Local 1740; Potter, Russell and Singh grievances*, November 15, 1978. Interim award: Lunney, Tate, Lanz — 4 pages. (65)

Promotion

Application for promotion — general application held on file: whether grievor had valid application on file; grievance dismissed. *Re Dominion Stores Limited and Retail, Wholesale and Department Store Union, Local 414; DeSilva grievance*, December 4, 1978. Majority: Weatherill, White — 9 pages; dissent: Barron — 1 page. (66)

Qualifications: employer appointing junior employee to posted job: junior employee having past experience: grievance dismissed. *Re County of Kent, The Corporation of (Thamesview Lodge, Chatham) and Service Employees Union, Local 210; Bardyla grievance*, December 14, 1978. Majority: Bigelow, Wakely — 3 pages; dissent: Coburn — 1 page; appendices — 3 pages. (67)

Qualifications — whether appropriate factors taken into consideration in arriving at management decision; grievance allowed. *Re The Red Lake Board of Education and Canadian Union of Public Employees, Local 175; Glushek grievance*, October 6, 1978. Majority: Lunney, Sharpe — 72 pages; dissent: Davis — 1 page; appendix — 22 pages. (68)

Qualifications — whether educational requirement of grade XIII unreasonable; grievance allowed. *Re Beachvilime Limited and Canadian Chemical Workers Union, Local 32; group grievance*, November 2, 1978. Palmer — 19 pages. (69)

Qualifications: whether grievor satisfies normal requirements of job; grievance dismissed. *Re Ottawa General Hospital and Canadian Union of Public Employees, Local 1657; Valliere grievance*, December 4, 1978. Weatherill, Henry, Sirois — 6 pages. (Award in French) (70)

Qualifications — whether proper criteria applied; training period provided; matter remitted to employer for reconsideration; grievance allowed. *Re Gabriel of Canada Limited and International Association of Machinists and Aerospace Workers, Local 1295; McPeake grievance*, December 11, 1978. Kates — 23 pages; dissents: Tate — 4 pages, Healy — 2 pages. (71)*

Tenure of university professor: grievor alleging wrongful and unreasonable refusal of tenure; whether mandatory qualifications met; grievance dismissed. *Re The University of Ottawa and The Association of Professors of the University of Ottawa; Valero grievance*, July 21, 1978. Frankel, Mackay, Sutherland-Brown — 17 pages. (72)*

Reporting Pay

Entitlement: onus on grievor to show he did report for work; grievance dismissed. *Re Dominion Stores Limited and United Steelworkers of America, Local 14045; Naroski grievance*, December 12, 1978. Roberts — 7 pages. (73)

Notice of lay-off: whether posting notices at some of the time-clocks reasonable; grievance allowed. *Re Canadian Appliance Manufacturing Company Limited and United Steelworkers of America, Local 3129; group grievance*, November 24, 1978. Linden — 12 pages. (74)

Union Officials

Leave of absence on union business: extent of company's discretion in granting leave; grievance allowed. *Re Canadian Timken Limited and United Steelworkers of America, Local 4906; McNaughton grievance*, November 6, 1978. Rayner — 9 pages. (75)

Union Security

Non-unit workers — suppliers' salesmen: limited right to do unit work if connected with sales; extent of right; grievance dismissed. *Re Hiway Market Limited and Retail Clerks Union, Local 206; union grievance*, November 20, 1978. Brunner, Strickland, Tarasuk — 11 pages; addendum: Tarasuk — 2 pages. (76)

Vacation Pay

Bonus — entitlement: vacation pay bonus for promptness and good attendance; company arguing grievor failed to provide proper medical certificates explaining absences; grievance allowed. *Re Hartz Mountain Pet Supplies Limited and Canadian Chemical Workers' Union, Local 31; Chisolm grievance*, December 18, 1978. Barton — 10 pages. (77)

Wages

Incentive pay: dissatisfaction with rate set as result of time study; grievance dismissed. *Re Simmons Limited and United Electrical, Radio and Machine Workers of America, Local 513; Meyers grievance*, November 11, 1978. Majority: Weatherill, Sanderson — 6 pages; dissent: Lucas — 4 pages. (78)

"Piece work" calculation: increased machinery productivity; what constitutes a time study as required for piece work rating; grievance dismissed. *Re Kirsch of Canada Limited and International Union of United Automobile Workers, Local 636; Corbett grievance*, November 27, 1978. Brunner — 11 pages. (79)

Salary progression — annual increments: whether experience level should be calculated and payment made at higher grid position although agreement expired; grievance allowed. *Re The Sudbury Board of Education and Ontario Secondary School Teachers' Federation, District 31; union grievance*, December 7, 1978. Linden — 9 pages. (80)*

Salary progression — entitlement to higher salary level for educational attainments; whether courses recognized for the purposes of evaluation; grievance allowed. *Re The Board of Education for the Borough of North York and The North York District Ontario Public School Men Teachers' Federation; Salmon grievance*, December 8, 1978. Brown, Meek, Partlow — 19 pages. (81)

Salary progression — grievor claiming entitlement to higher rate of pay upon completion of academic requirements of training program: whether completion of on-the-job components also required for higher rate; grievance dismissed. *Re Fiberglas Canada Limited and Oil, Chemical and Atomic Workers International Union, Local 9-14; Smith grievance*, December 27, 1978. Burkett — 9 pages. (82)

Work Assignment

Grievor claiming company improperly assigned work to part-time employee: whether unusual circumstances present; grievance allowed. *Re Dominion Stores Limited and United Steelworkers of America, Local 14045; Meloche grievance*, December 12, 1978. J.L. Roberts — 9 pages. (83)

The following awards in interest arbitrations under *The Hospital Labour Disputes Arbitration Act* were also filed with the Commission during the month of December, 1978.

The Corporation of the County of Lambton (Twilight Haven Home for the Aged and North Lambton Rest Home) and Ontario Nurses' Association, Brown, Walsh — 15 pages; partial dissent: Vezina — 1 page.

The Participating Hospitals (55 in number) and Canadian Union of Public Employees and its Local Unions, Burkett, Belford — 23 pages; dissent: Walsh.

Scarborough Centenary Hospital and Canadian Union of Public Employees, Local 1320 (Service and Clerical Staff), Davidson — 17 pages; dissents: Varty — 2 pages; Simon — 1 page.

The Regional Municipality of Waterloo (Sunnyside Home) and London and District Service Workers' Union, Local 220, Davidson — 11 pages; dissent: Noble — 6 pages; addendum: Walsh — 1 page; exhibits — 6 pages.

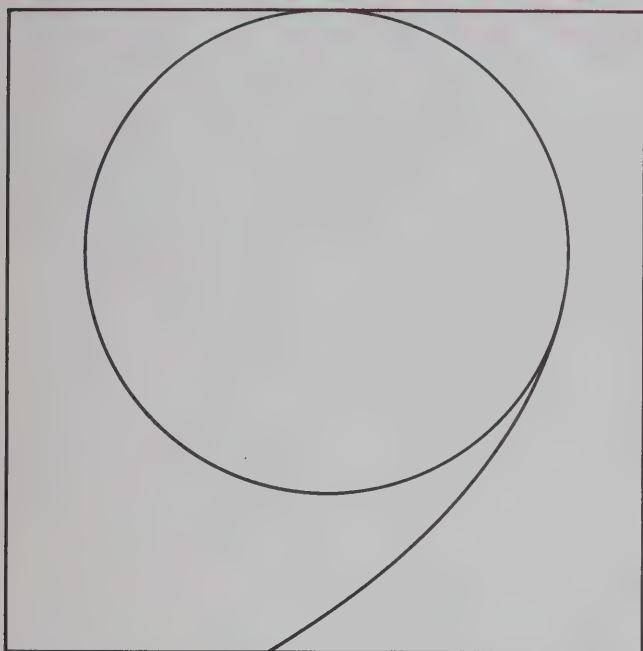
The awards may be seen at the office of the Commission, 400 University Avenue, 14th floor, Toronto. Copies of awards may be obtained for a fee of 50 cents per page. Orders will be filled on receipt of an application and a cheque or money order payable to the Treasurer of Ontario for the applicable amount, which should be forwarded to: Cashier's Office, Ministry of Labour, 400 University Avenue, Toronto, Ontario M7A 1V6.

Filing Awards

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Monthly Bulletin



The Ontario Labour-Management
Arbitration Commission

His Honour Judge Walter Little, Chairman
Dorothy M. Johnson, Registrar

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Hon. Robert Elgie, M.D., Minister
T.E. Armstrong, QC, Deputy Minister

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Arbitrators

The following person has been approved as chairman of boards of arbitration or single arbitrator pursuant to The Ontario Labour Management Arbitration Commission Act and Ontario Regulation 635:

Larry A. Roine, 255 Albert Street, Suite 503, Ottawa, Ontario, K1P 6A9; telephone (613) 233-1171.

Awards

The following awards were filed with the Commission during the month of January, 1979, under Section 6(2) of Ontario Regulation 635, R.R.O. 1970.

The summary was prepared at the Faculty of Law, Queen's University, under the supervision of C.G. Simmons, B.A., B.C.L., LL.M., and K.P. Swan, B.Eng., LL.M.

*Indicates award to be reported in full or in part in *Labour Arbitration Cases*.

Arbitrability

Job vacancy: application of collective agreement language to non-bargaining unit work; grievance not arbitrable. *Re Toronto, The Municipality of Metropolitan and Canadian Union of Public Employees, Toronto Civic Employees Union, Local 43; group grievance*, January 8, 1979. Majority: Brent, Murray — 14 pages; dissent: Tate — 3 pages. (1)*

Bargaining Unit

Transfer — teacher transferred from one unit to another upon voluntary application: whether a member of new bargaining unit; grievance dismissed. *Re The York County Board of Education and York County Elementary Teachers' Association of Federations; McFarlane grievance*, January 16, 1979. Majority: Weatherill, Rogers — 17 pages; dissent: Cooney. (2)

Classification

Claim for higher classification: whether system one of job classification or job progression; grievance dismissed. *Re Fleet Industries and Frontier Lodge Number 171 International Association of Machinists and Aerospace Workers; Oleksiuk and Mathews grievance*, January 25, 1979.

Majority: Ellis, Marchand — 11 pages; dissent: Wren. (3)

New job created on acquiring power equipment — arbitration re level of job compared to old one: new job requiring less physical effort but increased responsibilities; grievance dismissed. *Re The Toronto Electric Commissioners and Canadian Union of Public Employees, Local 1; union grievance*, November 27, 1978. Beck — 12 pages. (4)

Damages

Improper work scheduling — grievor entitled to overtime rates: whether overtime payable in addition to a straight time guarantee; grievance dismissed. *Re Ottawa Citizen and Ottawa Newspaper Guild, Local 205; Hartnett grievance*, January 11, 1979. Majority: Brown, Cook — 9 pages; dissent: Rupert — 3 pages. (5)

Personal clothing — grievor claiming replacement value of clothing soiled by oil on the job and salary for time taken to change clothing; whether provision of collective agreement violated; grievance dismissed. *Re Eaton Yale Limited and United Automobile Workers, Local 127; Brideau grievance*, January 5, 1979. Hinnegan — 8 pages. (6)

Reinstatement: parties agreed at hearing. *Re United Tire and Rubber Manufacturing Limited and Local 973, United Rubber, Cork, Linoleum and Plastic Workers of America; Driver grievance*, January 24, 1979. O'Shea — 3 pages. (7)

Demotion

Disciplinary demotion alleged — grievor had prolonged absences because of illness: no question of avoidance of wage rates or seniority; grievance dismissed. *Re Kelsey-Hayes Canada Limited and United Automobile Workers, Local 636; Knapp grievance*, January 23, 1979. Betcherman — 8 pages. (8)

Non-disciplinary demotion: employer's duty to act fairly; demotion wholly unconnected and irrelevant to grievor's performance; grievance allowed. *Re Falconbridge Nickel Mines Limited and United Steelworkers of America; Pechkoff grievance*, December 11, 1978. Majority: Brunner, Signoretti — 12 pages; dissent: Bennett — 2 pages. (9)

Discharge

Absence without leave — failure to report for work after end of strike; grievor claiming company failed to give proper notice to return to work; grievance dismissed. *Re The Algoma Steel Corporation Limited and United Steelworkers of America, Local 2251; Hallin grievance*, January 16, 1979. Majority: O'Shea, Morley — 17 pages; dissent: Keck. (10)*

Absence without leave — grievor failing to return from leave of absence on scheduled reporting date; grievor claiming medical difficulties prevented his return; grievance dismissed. *Re Monsanto Canada Limited and Amalgamated Clothing and Textile Workers Union Greater Toronto Textile Joint Board, Local 1438; Hehar grievance*, January 5, 1979. Majority: Hinnegan, Mitchnick — 10 pages; dissent: Hainsworth. (11)

Absence without leave — grievor incarcerated: whether a "personal reason" for absence; consideration of ability to work on a temporary absence from jail; suspension substituted. *Re Domtar Packaging Limited and Canadian Paperworkers Union, Local 1470; Willman grievance*, January 12, 1979. Majority: O'Shea, Quail — 19 pages; dissent: Healy. (12)*

Absenteeism — innocent absenteeism: legitimate illness being treated at time of discharge; whether company obliged to investigate possibility of recovery; grievance allowed. *Re Dominion Stores Limited and Retail, Wholesale and Department Store Union, Local 414; Higgins grievance*, December 29, 1978. Majority: Brown, Dahmer — 21 pages; dissent: White — 3 pages. (13)*

Absenteeism — innocent absenteeism: no prospect of improvement in attendance; grievance dismissed. *Re Joy Manufacturing (Canada) Company and United Steelworkers of America, Local 2871; Vitez grievance*, January 8, 1979. Brown — 13 pages. (14)

Absenteeism — malingering: reinstatement conditional on six months normal and reasonable attendance. *Re City of Mississauga, The Corporation of and Amalgamated Transit Union, Local 1572; Meecham grievance*, January 10, 1979. Brown — 22 pages. (15)*

Absenteeism: prior corrective discipline for absenteeism; whether culminating absence was unjustified; grievance allowed. *Re Rayco Stamping Products Limited and Christian Labour Association of Canada; Toner grievance*, January 26, 1979. O'Shea — 12 pages. (16)

Absenteeism: whether period incarcerated while awaiting sentence to be included in calculation of absences; grievance dismissed. *Re Massey-Ferguson Industries Limited and United Automobile Workers, Local 458; Taylor grievance*, December 28, 1979. Rayner — 7 pages. (17)

Assault on another employee: effect of similar incident in discipline record; grievance dismissed. *Re Ford Motor Company of Canada Limited and United Automobile Workers; Cindric grievance*, December 14, 1978. Rayner — 7 pages. (18)

Attempted theft of company property: factors considered in mitigation of penalty; grievance dismissed. *Re Ford Motor Company of Canada Limited and United Automobile Workers; Britton grievance*, December 14, 1978. Rayner — 5 pages. (19)

Consumption of alcohol on job: whether company consistently applying policy with respect to alcohol; grievance dismissed. *Re Auto Haulaway Releasing Services Limited and Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 880; Pitts and Simpson grievances*, January 18, 1979. Majority: O'Shea, McClelland — 16 pages; dissent: Kobryn — 11 pages; appendix — 15 pages. (20)

Dishonesty — improper use of air pass benefit: grievor failed to report his divorce and supplied his ex-wife and children with passes; no intention to defraud; suspension substituted. *Re Air Canada and International Association of Machinists and Aerospace Workers; Eastwood grievance*, January 19, 1979. Brown — 19 pages. (21)

Drinking intoxicating beverage on the job and threatening supervisor: credibility of witnesses; grievance allowed. *Re Humpty Dumpty Foods Limited and Retail, Wholesale Bakery and Confectionery Workers' Union, Local 461; Ghangas grievance*, January 3, 1979. Majority: Palmer, Reekie — 29 pages; dissent: Cosman — 14 pages. (22)

Falsification of work records: past disciplinary notations; no progressive discipline; grievance dismissed. *Re Consumers Gas Company and Independent Gas Workers' Union; Miller grievance*, January 12, 1979. Majority: Rayner, Healy — 10 pages; dissent: Simon — 2 pages. (23)

Fighting — unprovoked assault on fellow employee: good record and apologetic attitude; reinstatement without compensation. *Re NCR Canada Limited and Graphic Arts International Union, Local 28-B; Wilson grievance*, January 23, 1979. Beck — 8 pages. (24)

Inability to perform work — compensable injury: grievor unable to perform any work in bargaining unit; whether entitled to right to return to work and accompanying benefits for an indefinite period; grievance dismissed. *Re Uniroyal Limited, Tire Factory and Rubber Machinery Shops of Kitchener and Local 80 of United Rubber, Cork, Linoleum and Plastic Workers of America; Vizkeleti grievance*, January 25, 1979. Majority: Brandt, Martin — 8 pages; dissent: Bruder. (25)

Incompetence — employer's obligation to warn employee of allegations: suspension substituted. *Re C.L.C. Labour Education and Studies Centre and Office and Professional Employees' International Union, Local 225; Kratis grievance*, January 2, 1979. Curtis — 12 pages. (26)

Insubordination — grievor insubordinate and directing threatening remarks to supervisors; suspension substituted. *Re Scarborough General Hospital and Canadian Union of Public Employees, Local 1487; Bingley grievance*, January 8, 1979. Majority: McLaren, Kitchen — 10 pages; dissent: Filion — 3 pages. (27)

Insubordination — grievor insubordinate and using abusive language: significant previous disciplinary problems; grievance dismissed. *Re Canadian Industries Limited and United Steelworkers of America, Local 13328; Gregg grievance*, January 3, 1979. Majority: O'Shea, Churchill-Smith — 12 pages; dissent: Signoretti. (28)

Misuse of leave of absence — employment elsewhere while on company sickness and accident benefits; grievance dismissed. *Re Holmes Foundry Limited and United Automobile Workers, Holmes Foundry Unit of Local 456; Blythe grievance*, January 23, 1979. O'Shea — 13 pages. (29)

Offensive letter sent to employer — grievor had failed in application for new position; employer did not consider as culminating incident despite bad work record; reinstatement without compensation. *Re Town of Fort Frances, The Corporation of and Canadian Union of Public Employees, Local 65; Salchert grievance*, October 23, 1978. Majority: Lunney, Lloyd — 7 pages; dissent: Simpson. (30)

Onus of proof: credibility assessed: grievance allowed. *Re Metropolitan Toronto, Municipality of and Canadian Union of Public Employees, Local 79; Mongia grievance*, August 30, 1976. Abbott — 21 pages. (31)

Past record — earlier incidents of alleged misconduct that failed to bring discipline: employer seeking to rely on new justification for discharge; past record not admissible; grievance allowed. *Re Borough of North York, The Corporation of and North York Borough Municipal Employees, Canadian Union of Public Employees, Local 373; Bamrah grievance*, January 4, 1979. Schiff — 15 pages. (32)*

Procedural requirements — failure to confirm discharge and reason in writing: discharge void; grievance allowed. *Re Kwikasair Limited and Kwikasair (Division of Alltrans Express Limited) and Teamsters Union, Local 938; Madden grievance*, January 8, 1979. Majority: Brent, Tait — 8 pages; dissent: Thibeault. (33)

Procedural requirements — laches: employer delaying eight months before discharging; grievance allowed. *Re Borough of North York, The Corporation of and North York Borough Municipal Employees*. See (32), *supra* (34)*

Quit alleged: criteria for determining if an employee has quit his job; grievance allowed. *Re Dominion Stores Limited and Retail, Wholesale and Department Store Union, Local 414; Normand grievance*, November 8, 1978. Majority: J.L. Roberts, Barron — 14 pages; dissent: White — 1 page. (35)

Theft — gold bearing rocks found in grievor's lunch pail; grievance dismissed. *Re Pamour Porcupine Mines Limited and United Steelworkers of America; Elliott grievance*, January 24, 1979. O'Shea — 14 pages. (36)

Theft — stealing money from sale of alcoholic beverages: grievors' actions observed by private investigators; Sanchez grievance allowed; Gendron grievance dismissed. *Re Rodas Investments Limited and The Hotels, Clubs, Restaurants, Taverns, Employees' Union, Local 261; Sanchez and Gendron grievances*, December 15, 1978. Majority: Scott, Desjardins — 10 pages; dissent: Dunn — 3 pages. (37)

Wilful damage to company property — grievor on lawful strike at time: whether allegations proved; grievance allowed. *Re The Becker Milk Company Limited and Milk and Bread Drivers, Dairy Employees, Caterers and Allied Workers, Local 647; Varrin grievance*, January 4, 1979. Beatty — 11 pages. (38)

Discipline

Absence from work — extended coffee break and failure to clean pilot light as required: grievor's previous work record unsatisfactory; grievance dismissed. *Re Provincial Gas Company and United Electrical, Radio and Machine Workers of America, Local 517; Hannah grievance*, December 31, 1978. Majority: O'Connor, Healy — 10 pages; dissent: Bosnich — 2 pages. (39)

Absence — illness: whether "medical certificate" sufficient to verify illness; grievance allowed. *Re Dominion Stores Limited and Retail, Wholesale and Department Store Union, Local 414; Kamps grievance*, December 29, 1978. Majority: Brown, Spaxman — 10 pages; dissent: White — 2 pages. (40)

Absence without leave: grievor leaving plant early after being injured on job and honestly believing work assignment to be unsafe; grievance allowed in part. *Re Alcan Canada Products Limited, Aurora Works and United Steelworkers of America, Local 7193; unnamed grievance*, January 10, 1979. Shime, Hart, Ronson — 9 pages. (41)

Careless operation of machinery — grievor struck machine with scraper, breaking the tool and getting steel in the material being mixed; failure to inspect machine after incident; grievance dismissed. *Re Rubbermaid (Canada) Limited and United Automobile Workers, Local 252; Grainger grievance*, December 29, 1978. Weatherill — 11 pages. (42)*

Discourteous treatment of customer: grievance dismissed. *Re Dominion Stores Limited and Retail, Wholesale and Department Store Union, Local 414; Clarke grievance*, January 18, 1979. Majority: O'Shea, White — 11 pages; dissent: Spaxman — 2 pages. (43)

Falsification of time card: bringing non-employees on company premises during evening shift; two day suspension and demotion imposed; grievance allowed in part. *Re Dominion Stores Limited and Retail, Wholesale and Department Store Union, Local 414; Cassidy grievance*, December 15, 1978. Majority: Palmer, Churchmuck — 8 pages; partial dissent: Wynter — 1 page. (44)

Horseplay — injury to fellow employee; reprimand substituted. *Re Ford Motor Company of Canada Limited and International Union of U.A.W.; Peck grievance*, December 14, 1978. Rayner — 3 pages. (45)

Illegal strike — walkout because of extreme heat allegedly injurious to health: whether a collective decision to raise health and safety as an excuse to refuse employer's order to work; shorter suspension substituted. *Re Haley Industries Limited and United Steelworkers of America, Local 4820; group grievance*, December 29, 1978. Brown, Heard, Churchill-Smith — 23 pages. (46)

Insubordination — grievor addressing foreman with insulting language; grievance dismissed. *Re Abex Industries Limited and United Steelworkers of America, Local 4927; Fleming grievance*, January 12, 1979. Hinnegan — 4 pages. (47)

Insubordination — legitimate complaint about working conditions communicated in an insolent and abusive manner; shorter suspension substituted. *Re International Harvester Company of Canada Limited and United Automobile Workers, Local 127; Martin grievance*, January 18, 1979. O'Connor — 6 pages. (48)

Lateness: five day suspension after previous suspension failed to improve long record of lateness; grievance dismissed. *Re International Harvester Company of Canada Limited and United Automobile Workers, Local 127; Tricker grievance*, December 28, 1978. O'Connor — 7 pages. (49)

Theft — criminal charges laid: truck driver charged with stealing from his employer and suspended until trial; conviction fairly certain and no supervised jobs available; grievance dismissed. *Re Dominion-Consolidated Truck Lines Limited and Teamsters, Local 141; McGee grievance*, January 24, 1979. Brent, Singleton, Kobryn — 10 pages. (50)*

Warnings — letters in regard to future apparent illnesses: whether such letters are disciplinary; letters sent to those with significant past absences; grievance dismissed. *Re Union Gas Limited and Oil, Chemical and Atomic Workers' International Union; O'Brien and Renaud grievances*, December 28, 1978. Hinnegan, Rogers, Carrier — 5 pages. (51)*

Evidence

Medical certificates: medical reports prepared after discharge; grievor dismissed for lack of substantiation of sickness; reports withheld prior to hearing by union on grievor's request; evidence admissible. *Re Steinberg's Limited and Canadian Food and Allied Workers, Local 175; Wollborn grievance*, January 22, 1979. Weatherill — 9 pages. (52)*

Grievance Procedure

Failure by union to proceed with all steps of the grievance procedure: whether Plant Manager acting as Branch Manager; grievance arbitrable. *Re Humpty Dumpty Foods Limited and The Retail, Wholesale Bakery and Confectionary Workers' Union, Local 461*. See (22), *supra*. (53)

Formal requirements: employer claiming grievance not sufficiently specific: grievor giving oral particulars concerning written grievance on day of filing; grievance arbitrable. *Re The St. Thomas-Elgin General Hospital and Ontario Nurses' Association; White grievance*, October 30, 1978. Majority: Fraser, Farrar — 18 pages; dissent: Angus — 2 pages. (54)

Timeliness — four month delay in referring grievance to arbitration in face of fifteen day time limit; only excuse forgetfulness; grievance dismissed. *Re Consolidated-Bathurst Packaging Limited and International Woodworkers of America; group grievance*, January 19, 1979. Majority: Picher, Rogers — 9 pages; dissent: Alper — 1 page. (55)

Timeliness — grievance not filed within time limits: union had long prior notice of circumstances; grievance not arbitrable. *Re The Sault Ste. Marie Board of Education and Canadian Union of Public Employees, Local 16; union grievance*, January 24, 1979. Majority: Brent — 12 pages; dissent: Kozak — 5 pages. (56)

Holiday Pay

Entitlement — qualifying days: prior Saturday a regularly scheduled shift; shift recently assigned as compulsory overtime; grievance dismissed. *Re ITT Aimco Division, Mississauga Operations and United Steelworkers of America, Local 7574; group grievance*, December 22, 1978. O'Shea — 16 pages. (57)

Job Posting

Failure to post job — new job created: job created for junior employee in wake of previous grievance; no resulting pay difference; grievance allowed without compensation. *Re Falconbridge Nickel Mines Limited and United Steelworkers of America, Local 6855; Caverley grievance*, January 3, 1979. Majority: O'Shea, Valin — 18 pages; dissent: Gerard. (58)

Lay-Off

Apprentices — ratio between journeymen and apprentices: whether ratio is discretionary; whether oral agreement to lower ratio binding; grievance allowed in part. *Re Massey-Ferguson Industries Limited and United Automobile Workers, Local 458; Powell grievance*, January 19, 1979. Simmons — 7 pages. (59)*

Bumping rights: whether seniority by department or by classification; grievance dismissed. *Re Falconbridge Nickel Mines Limited and Sudbury Mine, Mill and Smelter Workers Union, Local 598; Hastie, Laframboise grievances*, January 25, 1979. Majority: Brunner, Robbins — 34 pages; dissent: Winkler — 10 pages. (60)

Maternity Leave

Employer required leave — s. 35 of *Employment Standards Act*; whether absence due to pregnancy or pre-existing disability; grievance allowed. *Re Clarke Institute of Psychiatry and Ontario Nurses' Association (Representing Members Chartered as Nurses' Association, Clarke Institute of Psychiatry — Local 54); Devlin grievance*, January 5, 1979. Majority: O'Shea, Herman — 22 pages; dissent: Storie — 5 pages. (61)*

Overtime

Entitlement — scheduled overtime cancelled because of suspension commencing the next day: failure to mitigate damages by performing offered alternative overtime; grievance allowed without compensation. *Re Rubbermaid (Canada) Limited and United Automobile Workers, Local 252*. See (42) *supra*. (62)*

Entitlement: whether "currently performing the job" refers to job classification or duties performed within a classification; grievance allowed. *Re General Foods Limited and Canadian Food and Allied Workers, Local P-1230; Beaton grievance*, January 25, 1979. Majority: Weatherill, Leahy — 8 pages; dissent: MacLean — 3 pages. (63)*

Probationary Employees

Status necessary to bring grievance — grievor a student: whether students subject to probationary period; grievance not arbitrable. *Re The Community Services Board of the City of Sault Ste. Marie and Canadian Union of Public Employees, Local 3; Haynes grievance*, January 24, 1979. Majority: Brent, Forbes — 8 pages; dissent: Kozak — 3 pages. (64)*

Promotion

Qualifications: criteria for assessing qualifications; grievance dismissed. *Re Canadian Industries Limited and United Steelworkers of America; Ellis grievance*, December 20, 1978. Majority: McLaren, Storie — 9 pages; dissent: Shane (65)

Qualifications: grievor's ability to perform required work insufficient; grievance dismissed. *Re Ontario Federation of Labour and Office and Professional Employees International Union, Local 343; Baker grievance*, January 3, 1979. Punnett — 2 pages. (66)

Qualifications — language ability: grievor unable to qualify as he could not write English well enough; grievance dismissed. *Re Regional Municipality of Peel and International Brotherhood of Electrical Workers, Local 636; DeFranco grievance*, December 6, 1978. Majority: Beck, Black — 11 pages; dissent: Fisher — 2 pages. (67)

Qualifications: whether grievor and incumbent equal in skills and qualifications; grievance allowed. *Re The West Nipissing General Hospital and Ontario Nurses' Association; Poirier grievance*, December 4, 1978. Majority: Teplitsky, Switzman — 6 pages; dissent: Baker — 3 pages. (68)*

Qualifications — whether qualifications relatively equal: onus on union to show substantial and demonstrable margin of difference; grievance dismissed. *Re The Great Atlantic and Pacific Company of Canada and Canadian Food and Allied Workers Union, Locals 175 and 633; Niemi grievance*, January 29, 1979. Majority: Weatherill, Dinsdale — 9 pages; dissent: Simon. (69)*

Recall

Seniority: recall schedule disrupted by bad weather: cancellation of shifts providing fewer hours for senior employees than for junior; grievances dismissed. *Re Domtar Construction Materials Limited and International Chemical Workers Union, Local 603; Cook and Arrowsmith grievances*, January 22, 1979. Majority: Weatherill, Byers — 9 pages; did not concur: Crozier. (70)

Redundancy

Teachers — surplus teachers due to declining enrolment: proper procedure for determining surplus teachers: grievance dismissed. *Re The Board of Education for the City of Toronto and Its Elementary Teachers; group grievance*, January 8, 1979. Majority: Beatty, Filion — 15 pages; dissent: Posen. (71)

Reporting Pay

Notice of cancellation: workers attempted to report after large snowstorm hit area; whether they had received adequate notice of shift cancellation; grievance allowed. *Re Eaton Yale Limited, Forestry and Construction Equipment Division and International Moulders and Allied Workers, Local 246; group grievance*, January 23, 1979. Dunn — 4 pages; addendum — 1 page. (72)

Res Judicata

Policy grievance — individual compensation claimed on basis of finding in previous policy grievance: grievors and issues the same; grievances dismissed. *Re Keeprite Products Limited and Keeprite Workers' Independent Union; group grievance*, December 29, 1978. Majority: Brown, Filion — 13 pages; dissent: Ballachey. (73)

Safety

Failure to supply safety shoes at employer's expense: whether employer's discretion to provide "special protective clothing deemed necessary by the employer" exercised unreasonably; grievance dismissed. *Re Scarborough General Hospital and Canadian Union of Public Employees; union grievance*, January 26, 1979. Majority: Weatherill, Filion — 9 pages; dissent: Riseley — 2 pages. (74)

Scheduling of Work

Assignment of weekends-off: grievor claiming rotation schedule failed to comply with agreement; grievor alleging employer failed to "endeavour" to maintain required schedule; grievance dismissed. *Re The St. Thomas-Elgin General Hospital and Ontario Nurses' Association*. See (54), *supra*. (75)

Change in shift times: shift lengthened and lunch made unpaid without consulting union; grievance allowed. *Re DRG Packaging Limited and Printing Specialties and Paper Products Union, Local 466; union grievance*, December 29, 1978. Gorsky, Joyce, Tate — 4 pages. (76)

Implementing six day week — Anti-Inflation Board approval required: whether actual implementation should have awaited formal approval; grievance dismissed. *Re Reed Ltd., Pigments Division and International Chemical Workers Union, Local 880; union grievance*, January 2, 1979. Majority: Shime, Easdale — 7 pages; dissent: Sloan. (77)*

Shift selection — application for day job through job posting provisions: collective agreement providing for sole discretion of employer in transfers within wage classification; grievance dismissed. *Re Eaton Yale Limited and United Automobile Workers, Local 127; Forget grievance*, January 5, 1979. Hinnegan — 4 pages. (78)

Work week — "regular" shift schedule commencing Sundays: whether contrary to collective agreement; grievance allowed. *Re Molson's Brewery Limited and Canadian Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers, Local 304; policy grievance*, January 15, 1979. Weatherill — 9 pages. (79)*

Seniority

Lay-off: whether seniority department-wide or bargaining unit-wide; grievance allowed. *Re The Espanola General Hospital and Canadian Union of Public Employees, Local 1332; Belanger and Wikviak grievances*, December 12, 1978. Majority: Brunner, McVey — 12 pages; dissent: Harnden — 4 pages. (80)

Promotion — new job awarded to employee less senior than grievor: collective agreement providing for departmental seniority; neither applicant from department in question; grievance dismissed. *Re Toronto East General and Orthopaedic Hospital and Service Employees Union, Local 204; Jones grievance*, December 27, 1978. Hinnegan, Ronson, Ortlieb — 7 pages. (81)

Sick Leave

Sick leave credits — calculation: whether unused credits during career must be used upon retirement; grievance allowed. *Re Borough of Scarborough, The Corporation of and Scarborough Professional Firefighters' Association, Local 626, I.A.F.F.; Brown grievance*, January 15, 1979. Kates — 8 pages. (82)*

Sick leave credits — payment of credits on death: different clauses regarding payout in collective agreement and Municipal Act; grievance allowed. *Re City of Stratford, The Corporation of and Canadian Union of Public Employees, Local 197; policy grievance*, October 18, 1978. J.L. Roberts, Pennesi, Waller — 6 pages. (83)

Sick Pay

Calculation — part day absences: whether employer erred in calculation of sick pay benefits; grievance allowed in part. *Re Union Gas Limited and Oil, Chemical and Atomic Workers' International Union, Local 9-938; Widdis grievance*, December 20, 1978. Majority: McLaren, Carrier — 10 pages; dissent: Rogers — 3 pages. (84)

Entitlement — employee disqualified from receiving weekly indemnity: whether entitled to sick pay; grievance allowed. *Re Union Gas Limited and Oil, Chemical and Atomic Workers' International Union, Local 9-769; Parent grievance*, January 26, 1979. Weatherill, White, Sanderson — 7 pages. (85)

Temporary Employees

Employment status — temporary employment for length of collective agreement probation period: whether employees become regular employees; grievance dismissed. *Re Kellogg Salada Canada Limited and American Federation of Grain Millers, Local 154; group grievance*, January 3, 1979. Majority: Kennedy, Morley — 8 pages; dissent: Kobryn — 3 pages. (86)

Wages

Retroactivity: grievor denied retroactive pay for maternity leave period as she subsequently resigned and did not return to work; grievance allowed. *Re Borough of Etobicoke, The Corporation of and Nurses' Association, Community Health Department, Borough of Etobicoke; unnamed grievance*, January 2, 1979. Majority: Shime, Angus — 17 pages; dissent: Mustard — 3 pages. (87)*

Set-off — employer attempting to recover excess wage payments by deductions from subsequent pay cheques; grievance allowed. *Re Air Canada and Canadian Air Line Employees' Association; group grievance*, December 14, 1978. Rayner — 5 pages. (88)*

Wage progression — grievor claiming right to proceed along salary progression schedule within specified period; whether employer entitled to place moratorium on advancement; grievance allowed. *Re International Nickel Company of Canada Limited and Canadian Guards Association, Local 105; Wieman grievance*, January 10, 1979. Rayner, Sanderson, McVey — 8 pages. (89)

Welfare Plans

Employee status — application for disability pension: whether employee's widow entitled to life insurance proceeds resulting from deceased's status as "employee" or as "pensioner"; grievance allowed. *Re Goodyear Canada Incorporated and United Rubber, Cork, Linoleum and Plastic Workers of America, Local 232; union grievance*, December 28, 1978. Majority: Schiff, Tate — 13 pages; dissent: Freedman — 6 pages. (90)*

Employer liability — disability insurance: whether employer must provide certain level of benefit though insurance company purports to owe less; collective agreement ties employer obligation to premium cost; grievance dismissed. *Re Norfolk Board of Education and Ontario Secondary School Teachers Federation, District 47; Meharg grievance*, January 16, 1979. Majority: Ellis, Hoskins — 10 pages; dissent: McConville — 1 page. (91)

Payment of premiums — "savings" on OHIP premiums: whether to be passed on to employees in form of additional weekly indemnity benefits; grievance dismissed. *Re The Sherwin-Williams Company of Canada Limited and International Chemical Workers Union, Local 441; union grievance*, January 16, 1979. Weatherill — 10 pages. (92)

Pension — entitlement: grievor suffered disabling illness and passed time required to receive retirement benefits while on leave of absence; employer had made no attempt to terminate; grievance allowed. *Re Canadian Johns-Manville Company Limited and Canadian Chemical Workers Union, Local 26; McKay grievance*, January 4, 1979. Majority: Kennedy, Pretty — 9 pages; dissent: Filion — 5 pages. (93)*

Pension plan — compulsory membership in pension plan: whether plan incorporated into agreement by reference; grievances dismissed. *Re The Globe and Mail Limited and Toronto Newspaper Guild; Patel and policy grievances*, November 17, 1978. Majority: Fox, Dinsdale — 7 pages; dissent: Tate — 6 pages. (94)*

Sickness and accident insurance: whether company bound to implement insurance plan; grievance allowed. *Re Windsor Tube and Metal Incorporated and United Automobile Workers, Local 195; union grievance*, January 5, 1979. Punnett — 3 pages. (95)

The following awards in interest arbitrations under *The Hospital Labour Disputes Arbitration Act* were also filed with the Commission during the month of January, 1979.

Queen Elizabeth Hospital, Toronto and International Union of Operating Engineers, Local 796, Kennedy — 10 pages; partial dissent: McNaughton — 3 pages; partial dissent: Ball — 6 pages.

Rest Haven Private Hospital and Ontario Nurses' Association, Betcherman, Walsh — 13 pages; partial dissent: Farrar — 3 pages.

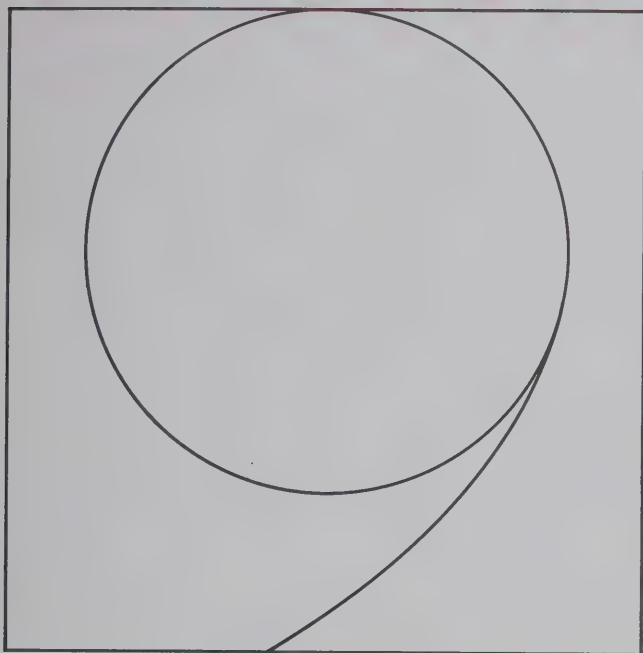
Victoria Hospital Corporation and The Office and Professional Employees International Union, Local 468, McIver, Beaulieu — 7 pages; addendum: Billings — 1 page; clarification of award: McIver, Beaulieu — 4 pages; dissent with respect to clarification of award: Billings — 2 pages.

Filing Awards

The attention of chairmen of boards of arbitration and sole arbitrators is drawn to the provision of Section 6(2) of the Regulation, which reads: 6.—(2) Every arbitrator shall, within ten days of issuing an award, file a copy thereof with the Commission. This provision would apply to all arbitrators approved under The Ontario Labour-Management Arbitration Commission Act and regardless of whether they were appointed as chairmen or sole arbitrators pursuant to the Act, by the parties or by the Minister.

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Monthly Bulletin



The Ontario Labour-Management
Arbitration Commission

His Honour Judge Walter Little, Chairman
Dorothy M. Johnson, Registrar

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Hon. Robert Elgie, M.D., Minister
T.E. Armstrong, QC, Deputy Minister

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Arbitrator

The following person has been approved as chairman of boards of arbitration or single arbitrator pursuant to The Ontario Labour-Management Arbitration Commission Act and Ontario Regulation 635:

Mrs. Maureen K. Saltman, 408 Glencairn Avenue,
Toronto, Ontario M5N 1V3; telephone (416) 484-8211.

Awards

The following awards were filed with the Commission during the month of February, 1979, under Section 6(2) of Ontario Regulation 635, R.R.O. 1970.

The summary was prepared at the Faculty of Law, Queen's University, under the supervision of C.G. Simmons, B.A., B.C.L., LL.M., and K.P. Swar, B.Eng., LL.M.

* Indicates award to be reported in full or in part in *Labour Arbitration Cases*.

Arbitrability

Alternative remedies — industry sponsored grievance committee: whether decision before private consensual tribunal forecloses arbitration; grievance dismissed. *Re Star Transfer and Teamsters Union, Local 938; Groves grievance*, October 25, 1978. Teplitsky, Bertuzzi, Trower — 6 pages. (1)

Discharge — nothing in the collective agreement limits employer's right to terminate employment: nature of common law rights; grievance not arbitrable. *Re Haldimand-Norfolk Regional Board of Commissioners of Police and Haldimand-Norfolk Regional Police Association; Mitchell grievance*, February 26, 1979. Brent — 7 pages. (2)*

Gratuities — distribution: arrangements with respect to distribution of gratuities; whether employer entitled to enforce existing practice with regard to gratuities; grievance arbitrable. *Re Windsor Arms Hotel Limited and Canadian Food and Associated Services Union; employee grievances*, February 20, 1979. Weatherill, Park, Wakely — 12 pages. (3)

Promotion grievance — employer to be "sole judge" of qualifications: effect on scope of arbitral review; grievance arbitrable. *Re McKellar General Hospital and Service Employees' International Union, Local 268; Craig grievance*, February 14, 1979. Brent — 14 pages. (4)

Bargaining Unit

Scope — new geographical location: whether within bargaining unit; grievance dismissed. *Re Abitibi Paper Company Limited and Office and Professional Employees International Union, Local 214; policy grievance*, January 30, 1979. Majority: Burkett, Shields — 18 pages; dissent: Geiger — 5 pages. (5)*

Bereavement Pay

Death of stepfather — not included in the collective agreement list of relatives: whether a subjective view of the list should be taken because of special relationship; grievance dismissed. *Re Bell Canada and Communications Union Canada; Bradbury grievance*, February 26, 1979. Majority: P.C. Picher, Healy — 15 pages; dissent: Goodman — 7 pages. (6)

Vacation — bereavement during vacation period: whether bereavement pay a benefit or an indemnity; grievance dismissed. *Re Dominion Stores Limited and Retail, Wholesale & Department Store Union, Local 579; Tosolini grievance*, February 9, 1979. Majority: Hinnegan, White — 5 pages; dissent: Lachance. (7)

Casual Employees

Limited scope of employment: whether functions ancillary to employment can be performed in areas "off-limits" to such employees; grievance dismissed. *Re Smith Transport Company Limited and Teamsters Union, Local 938; union grievance*, February 6, 1979. Majority: Weatherill, Singleton — 12 pages; dissent: Goudge — 3 pages. (8)

Classification

New position — higher classification assigned to job that the grievors had been performing for a number of years: what rank and level are appropriate; grievances allowed in part. *Re The Ottawa Civic Hospital and Canadian Union of Public Employees, Local 576; group grievance*, February 8, 1979. Majority: Johnston, Dixon — 7 pages; did not concur: Switzman. (9)

Payment for extra duties — whether employer estopped from denying a function an extra duty after payment as an extra duty made: grievance dismissed. *Re The Ontario Jockey Club and Mutuel Employees' Association, Local 528 Service Employees' International Union; union grievance*, January 4, 1979. Majority: Brunner, Murray — 16 pages; dissent: Tate — 3 pages. (10)

Temporary assignment — employees exercising supervisory responsibilities and duties: whether work to be characterized as "relief supervision" or "temporary supervision"; grievances allowed. *Re Ontario Hydro and Ontario Hydro Employees Union; Caley et al grievances*, February 5, 1979. Majority: Brandt, Goudge — 19 pages; dissent: Storie — 3 pages. (11)

Discharge

Absence — time limit for production of medical certificate exceeded; whether time limit strictly enforced; grievance dismissed. *Re Newman Structural Steel Limited and International Association of Bridge, Structural and Ornamental Iron Workers, Shopmen's Local Union 734; Guitar grievance*, February 6, 1979. Hinnegan — 8 pages. (12)

Absence without leave — failure to notify employer in advance as required by collective agreement: whether discharge warranted; reinstatement without compensation. *Re Canadian Salt Company Limited (Windsor Works) and United Automobile Workers, Local 195; Emond grievance*, February 12, 1979. McCulloch — 8 pages. (13)

Absence without leave — failure to report to work following vacation shutdown without offering acceptable explanation: grievance dismissed. *Re Mansfield-Denman General Company Limited and United Rubber, Cork, Linoleum and Plastic Workers of America, Local 455; Croteau grievance*, February 15, 1979. Majority: Brent, Scott — 11 pages; dissent: Bruder. (14)

Absence without leave — failure to report to work following vacation shutdown without offering acceptable explanation: grievance dismissed. *Re Mansfield-Denman General Company Limited and United Rubber, Cork, Linoleum and Plastic Workers of America, Local 455; Perrault grievance*, February 15, 1979. Majority: Brent, Scott — 11 pages; dissent: Bruder. (15)

Absence without leave — grievor over-stayed vacation to obtain medical treatment: apparent permission from employer and sufficient justification for absence; grievance allowed. *Re United Grain Growers Limited and Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employers, Grain Elevator Division, Lodge 650; Aiello grievance*, February 9, 1979. Bicknell, Stencer, Hebert — 12 pages. (16)

Absenteeism — failure to provide adequate explanations for excessive absenteeism: grievance dismissed. *Re The Budd Automotive Company of Canada Limited and United Automobile Workers, Local 1451; Scott grievance*, February 20, 1979. Weatherill — 6 pages. (17)

Absenteeism — failure to report absences: absence of culminating incident; suspension substituted. *Re Inmont Canada Limited and Canadian Chemical Workers Union, Local 25; Hnat grievance*, February 5, 1979. Brown — 15 pages. (18)

Absenteeism — frequent and lengthy absenteeism due to stress-related illness: sufficiency of warning before discharge; likelihood of improvement considered; grievance dismissed. *Re Automatic Electric (Canada) Limited and International Union of Electrical, Radio and Machine Workers, Local 526; Jenkinson grievance*, February 19, 1979. Majority: M.G. Picher, Healy — 12 pages; dissent: Herman — 6 pages. (19)

Absenteeism — innocent absenteeism due to illness: reasonable likelihood of improvement following surgery; conditional reinstatement without compensation. *Re Beach Appliances International Limited and United Automobile Workers, Local 641; Goyette grievance*, February 14, 1979. Roach — 9 pages. (20)

Abusive language — grievor's daughter referring to company president with racist phrase in phone call to company on grievor's behalf concerning previous altercation at work; grievance allowed on condition that grievor delivers to company written statement that she regrets incident and disassociates herself from such comments. *Re Globe Spring and Cushion Company Limited and United Steelworkers of America, Local 7291; Soszka grievance*, January 31, 1979. Kennedy, Curtis, Mitchnick — 8 pages. (21)

Culminating incident: grievor deliberately falsifying trip report: misrepresentations in application for employment and poor disciplinary record; grievance dismissed. *Re Consolidated Fastfrate Limited and Teamsters Union, Local 938; Manoritou grievance*, January 19, 1979. Majority: Brunner, Black — 15 pages; dissent: Marinelli. (22)

Culminating incident: whether conduct serious enough to disregard progressive discipline; whether a memo to employees constitutes a company rule; grievance dismissed. *Re The Campeau Corporation, Operating as the Toronto (Harbour Castle) Hilton and Hotel and Club Employees' Union, Local 299 of Hotel and Restaurant Employees and Bartenders International Union; Krissilas grievance*, January 31, 1979. Linden — 16 pages. (23)

Grievor failing to report to work within specified period following doctor's authorization: whether under the circumstances employer entitled to rely upon doctor's certificate; reinstatement with partial compensation. *Re LaSalle Machine Tool of Canada Limited and United Automobile Workers, Local 195; Prekup grievance*, February 20, 1979. Weatherill — 8 pages. (24)

Grievor failing to return from maternity leave: whether permission to extend leave unreasonably withheld; grievance allowed. *Re Board of Education for the City of Toronto and Canadian Union of Public Employees, Local 1325; Duso grievance*, February 20, 1979. Majority: Brown, Fagan — 25 pages; did not concur: Furlong. (25)

Grievor improperly used bereavement leave and encouraged lower production from fellow workers: previous record considered; suspension substituted. *Re Drecona Industries Limited and United Steelworkers of America, Local 4696; Jones grievance*, February 13, 1979. Majority: Kennedy, Hart — 11 pages; partial dissent: Foote — 1 page. (26)

Improper conduct alleged: employer claiming grievor failed to give satisfactory explanation for alleged incident involving female patient; grievance allowed. *Re Ongwanada Hospital, Penrose Division and Ontario Public Service Employees Union, Local 433; Johnson grievance*, January 30, 1979. Majority: Simmons, Cochrane — 15 pages; dissent: Sargeant — 7 pages. (27)

Insubordination — refusal to obey orders: grievor denying orders were given; grievance dismissed. *Re Ind-Ex Distributors Limited and Milk and Bread Drivers, Dairy Employees, Caterers, and Allied Employees, Local 647; Skinner grievance*, January 31, 1979. Brown — 32 pages. (28)

Insubordination — use of insolent and abusive language with foreman: grievor previously suspended for similar conduct; grievance dismissed. *Re Coca-Cola Limited and Canadian Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers; D'Aprile grievance*, February 9, 1979. Curtis — 9 pages. (29)

Leaving work without permission — grievor given option of action which employer then refused to allow him to exercise; grievance allowed. *Re North American Plastics Company Limited and United Automobile Workers, Local 251; Henry grievance*, January 15, 1979. Stewart — 7 pages. (30)

Procedural requirements — failure to give proper notice of release from employment: grievance allowed. *Re The Ontario Council of Regents for Colleges of Applied Arts and Technology and Ontario Public Service Employees Union; Minto grievance*, February 20, 1979. Majority: Brandt, Trower — 19 pages; dissent: McGivney — 8 pages; addendum: Trower — 2 pages. (31)*

Quit alleged — inability to handle job: company increased requirements of job after previous lax attitude; grievor admits inability to handle the new stricter regimen; reinstatement subject to availability of appropriate job. *Re The Andrew Malcolm Furniture Company Limited and International Woodworkers of America; Fisher grievance*, February 23, 1979. Springate, Martin, Smiley — 15 pages. (32)

Theft — grievor removed produce without payment and reduced produce price without authorization: grievance dismissed. *Re Dominion Stores Limited and Retail, Wholesale and Department Store Union, Local 579; Visentin grievance*, February 15, 1979. Majority: Brown, White — 22 pages; dissent: Lachance. (33)

Theft of company property: whether theft must meet requisites of a Criminal Code offence; warning substituted. *Re Beacon Hill Lodge and Service Employees Union, Local 183; Clouthier grievance*, February 2, 1979. Majority: P.C. Picher, Reilly, Piroth — 11 pages; addendum: Piroth — 2 pages; addendum: Reilly — 2 pages. (34)

Trespassing — entrance to company premises after hours: conflicting testimony; grievance allowed. *Re City of Oshawa, Corporation of and Canadian Union of Public Employees, Local 250; Drinkle grievance*, February 7, 1979. Majority: Dunn, Harding — 9 pages; did not concur: Noble. (35)

Unsatisfactory work performance: grievor making errors in patient care causing unsafe conditions; suspension substituted. *Re St. Vincent Hospital and International Union of Operating Engineers, Local 796; Connolly grievance*, December 15, 1978. Swan, Ball, Lister — 16 pages. (36)

Discipline

Absence without leave — failure to give notice of reason for absence: superior aware of grievor's illness causing absence; grievance allowed. *Re City of Hamilton, Corporation of and Canadian Union of Public Employees, Local 167; Murray grievance*, February 8, 1979. McIver — 24 pages. (37)

Absence without leave — no justification or excuse offered: whether suspicion of reasons behind absence sufficient for discipline; grievance allowed in part. *Re Canadian Timken Limited and United Steelworkers of America, Local 4906; Westlake grievance*, February 8, 1979. Hinnegan — 4 pages. (38)

Abusive language — directed to member of bargaining unit temporarily acting as supervisor: no apology; grievance dismissed. *Re Metropolitan Toronto, Municipality of and Canadian Union of Public Employees, Local 43; Jones grievance*, January 26, 1979. Majority: Teplitsky, Murray — 5 pages; dissent: Tate — 2 pages. (39)

Criminal charges — grievor charged with possession and trafficking of drugs outside company premises: whether company entitled to impose suspension pending investigation; grievance dismissed. *Re The Great Atlantic and Pacific Company of Canada Limited and Retail, Wholesale and Department Store Union, Local 414; employee grievance*, February 21, 1979. Majority: Brown, Dinsdale — 16 pages; dissent: Dahmer — 2 pages. (40)*

Criminal charges — grievors wilfully damaging public property during off-duty hours away from work place: whether actions of grievors injurious to company's reputation; grievances allowed. *Re Bell Canada and Communication Workers of Canada; Oliver, Withers grievances*, February 9, 1979. Majority: Beck, Walsh — 14 pages; dissent: Gray — 3 pages. (41)*

Insubordination — grievor refused to follow direction from staff nurse after having been given a warning notice for the same infraction: grievance dismissed. *Re The Perley Hospital and Canadian Union of Public Employees, Local 870; Peart grievance*, February 12, 1979. Majority: O'Shea, Stansel — 15 pages; dissent: McMullen. (42)

Insubordination — heated argument with superior about collective agreement: order to continue work disregarded; provocation and discrimination alleged; whether 3 day suspension appropriate; grievance dismissed. *Re Nepean, Corporation of the Township of and Canadian Union of Public Employees, Local 1021; Kennedy grievance*, December 29, 1978. Majority: Roine, Belisle — 28 pages; dissent: Acton — 14 pages. (43)

Misconduct — professional employee: standard of conduct requisite in dealing with patients; grievance dismissed. *Re The Greater Niagara General Hospital and Ontario Nurses' Association, Local 60; Bittle grievance*, January 18, 1979. Brunner, Symes, McKillop — 11 pages. (44)

Neglect of duty: whether one day suspension justified; grievor's past record and length of service considered; written warning substituted. *Re Borough of North York, Corporation of and North York Civic Employees' Union, Local 94, Canadian Union of Public Employees; Nunn grievance*, February 9, 1979. Hinnegan — 4 pages. (45)

On-call system: grievor's inability to respond within time limit; whether discharge or voluntary quit occurred; grievance allowed. *Re Sensenbrenner Hospital and Service Employees' Union, Local 478; Lamontagne grievance*, February 6, 1979. Majority: Dunn, McElhanney — 15 pages; partial dissent: McElhanney — 2 pages; dissent: Wren — 2 pages; addendum: Dunn — 1 page. (46)

Penalty — change in penalty assessed: employer dropped one penalty and later tried to impose another one; whether proper; grievance allowed. *Re The Budd Automotive Company of Canada Limited and United Automobile Workers; Hunt and Singh grievances*, February 26, 1979. Brown — 13 pages. (47)

Suspension: whether seniority can be revoked upon suspension; collective agreement limits revocation to discharge; grievance allowed in part. *Re Checkerboard Foods Ltd. and Ontario Poultry, Dairy and Allied Workers Council, Local P1105; De Ciccio grievance*, February 7, 1979. Baum — 15 pages. (48)*

Grievance Procedure

Timeliness — failure to submit grievance to arbitration within time limits: union arguing s. 37(5a) of *The Ontario Labour Relations Act* applicable to relieve against default; union representative honestly believing negotiations to settle grievance were being carried out after time limit and employer not prejudiced by delay; grievance arbitrable. *Re The United Counties of Stormont, Dundas and Glengarry, Corporation of and Canadian Union of Public Employees, Local 1792; MacWilliam grievance*, January 8, 1979. Roach, Bowman, Legault — 7 pages. (49)

Timeliness — union failing to file grievance within time limits; grievance form prepared by person not familiar with procedure and employer not prejudiced by delay; grievance arbitrable. *Re Ongwanada Hospital, Penrose Division and Ontario Public Service Employees Union*. See (27), *supra*. (50)

Holiday Pay

Entitlement — qualifying day: failure to work last scheduled day because of alleged illness; grievance dismissed. *Re Salvation Army Grace Hospital and Service Employees' Union, Local 210; Larock grievance*, February 9, 1979. Majority: Samuels, Burnell — 7 pages; dissent: Coburn — 1 page. (51)

Incentive Pay

Standards — time study of sofa and chair construction: time standard set. *Re House of Braemore Furniture Limited and Upholsterers' International Union of North America, Local 30; union grievance*, February 2, 1979. Wakfer — 2 pages. (52)

Job Posting

Procedural requirements — failure to post job for minimum period and neglecting to send notice to union as required; grievance allowed in part. *Re The United Counties of Stormont, Dundas and Glengarry, Corporation of Canadian Union of Public Employees*. See (49), *supra*. (53)

Management Rights

Investigation procedure: union claiming employer's interrogation of employees concerning alleged theft of hospital property improper; grievance dismissed. *Re The Toronto Western Hospital and Canadian Union of Public Employees, Local 1744; policy grievance*, January 29, 1979. Kennedy, Simon, Farrar — 9 pages; addendum: Simon — 1 page. (54)

Overtime

Entitlement: grievor claiming work assigned to lead hand who was not member of relevant overtime group; grievance allowed. *Re Foster Wheeler Limited and United Steelworkers of America; Lopoyda grievance*, February 1, 1979. Brown — 12 pages. (55)

Entitlement — whether provisos in article of entitlement constitute grounds of entitlement; grievance dismissed. *Re The Adams Mines, Cliffs of Canada Limited and United Steelworkers of America, Local 6409; Gagne grievance*, February 6, 1979. Barton — 6 pages. (56)

Entitlement: whether rescheduling of another employee's normal hours to meet operational needs constituting overtime; grievance dismissed. *Re International Minerals and Chemical Corporation (Canada) Limited and United Steelworkers of America, Local 8252; Drennan grievance*, February 16, 1979. Majority: Weatherill, McGee — 10 pages; did not concur: Gilday. (57)

Overtime Pay

Entitlement — pay for time spent reporting after shift: failure to seek overtime authorization or alert supervisor to inability to complete work in normal hours; grievance dismissed. *Re St. Catharines General Hospital and Ontario Nurses' Association, Local 26; Sparrow grievance*, January 4, 1979. Teplitsky, Richards, Dixon — 7 pages; addendum: Richards — 1 page. (58)

Part-time Employees

Welfare plans — fixed sum paid to grievors in lieu of welfare benefits provided for full-time employees: alleged entitlement to drug plan benefits provided for "all employees"; drug plan included under welfare benefits; grievances dismissed. *Re The City of Timmins Home for the Aged (Golden Manor) and Canadian Union of Public Employees, Local 1140; Sillifant et al grievances*, February 5, 1979. Majority: Bicknell, Bernardi — 10 pages; dissent: Farrell. (59)

Probationary Employees

Probationary period — calculation: non-consecutive periods as casual employee; whether part of probationary period; grievance not arbitrable. *Re City of Toronto and Metropolitan Toronto Civic Employees' Union, C.U.P.E., Local 43; Bosley grievance*, February 1, 1979. Majority: Gorsky, Paulin — 12 pages; addendum: Gorsky — 1 page; addendum: Paulin — 2 pages; dissent: Tate — 4 pages. (60)*

Promotion

Qualifications — ability: whether past failure of an ability test grounds for rejection when post-test experience in area exists; grievance allowed. *Re Dominion Stores Limited and Retail, Wholesale and Department Store Union, Local 414; Anderson grievance*, February 6, 1979. Majority: Weatherill, Weisbach — 10 pages; dissent: White — 2 pages. (61)*

Qualifications — employer to be "sole judge" of qualifications: whether employer acted reasonably and in good faith; grievance dismissed. *Re McKellar General Hospital and Service Employees' International Union; Craig grievance*. See (4), *supra*. (62)

Qualifications — experience: whether incumbent's superior experience attained through employer's violation of agreement to constitute a consideration; grievance allowed. *Re Borough of York, The Corporation of and Canadian Union of Public Employees, Local 10; Campbell grievance*, February 19, 1979. Majority: Kates, Fagan — 15 pages; dissent: Paulin — 4 pages. (63)

Qualifications — oral report: grievor claiming oral report concerning her work not made in compliance with required procedure; grievance allowed. *Re Waterloo County Separate School Board and OECTA; Lorentz grievance*, January 31, 1979. Majority: H.D. Brown, W.F. Brown — 18 pages; dissent: Bornhold — 5 pages. (64)*

Qualifications — seniority, education and experience to be considered: what criteria apply to considerations of experience; grievance dismissed. *Re Abitibi Paper, A Division of Abitibi Forest Products Limited and United Paperworkers International Union, Local 40; Sime grievance*, February 16, 1979. Bicknell — 10 pages. (65)

Qualifications: seniority to govern only if qualifications approximately equal; grievor less qualified; grievance dismissed. *Re Kellogg Salada Canada Limited and Bakery and Confectionery Workers International Union of America, Local 264; Armstrong grievance*, February 9, 1979. Majority: O'Shea, Heather — 8 pages; dissent: Gallagher. (66)

Qualifications: what constitutes "related" work experience; grievance allowed. *Re Toronto Hydro-Electric System and Local 1, Canadian Union of Public Employees; Kapalowski grievance*, February 7, 1979. Brent — 16 pages. (67)

Redundancy

Seniority — grievor as result of staff redundancy: whether employer obligated to recognize system-wide seniority in staff reduction; grievance dismissed. *Re Kenora District Roman Catholic Separate School Board and Kenora Branch Affiliate of Ontario English Catholic Teachers' Association; Basarada grievance*, February 22, 1979. Majority: Kennedy, Filion — 9 pages; dissent: Cherry — 3 pages. (68)*

Retroactivity

Grievors requesting right to return from part-time to full-time teaching positions under terms of current agreement: whether relevant article to have retroactive effect to cover teachers who went to part-time before current agreement; grievances dismissed. *Re Board of Education for the Borough of North York and Women Teachers' Association of North York; Wardell, Waisglass, Berg, Leechman grievances*, November 20, 1978. Majority: Beck, Sanderson — 9 pages; did not concur: Posen. (69)

Seniority

Calculation — resignation and subsequent rehire: whether seniority calculation should include first period of employment; grievance dismissed. *Re Board of Education for the Borough of Etobicoke and Women Teachers' Association of Etobicoke; Cox grievance*, February 22, 1979. Majority: Weatherill, Baker — 14 pages; dissent: Posen. (70)

Transfer from full-time to part-time status: whether seniority accumulated while full-time can be applied to application for promotion made while part-time; grievance dismissed. *Re Stelco Employees' (Hilton Works) Credit Union Limited and Office and Professional Employees' International Union, Local 343; Velocci grievance*, February 6, 1979. Majority: Dunn, Lumb — 8 pages; dissent: Brown. (71)*

Sick Leave

Return to work — notice of return: failure to advise central office prior to return from sick leave; regular work not available; alternate work refused; whether loss of day's pay appropriate; grievance allowed in part. *Re Municipality of Metropolitan Toronto and Metropolitan Toronto Civic Employees' Union, Local 43; Parks grievance*, January 29, 1979. Majority: Teplitsky, Tate — 9 pages; dissent: Whittaker — 5 pages. (72)

Transfer

Temporary transfer — involuntary transfer to another department: whether employer required to transfer according to seniority; employer under duty to act fairly; grievance allowed. *Re City of Toronto, Corporation of and Toronto Civic Employees Union, Local 43, Canadian Union of Public Employees; McLennan grievance*, February 12, 1979. Majority: Brent, Tate — 10 pages; addendum: Tate — 1 page; dissent: Dinsdale — 5 pages. (73)

Vacation Pay

Entitlement — sessional employee: whether mode of calculation of vacation pay different from that of full-time employees; grievance dismissed. *Re Ontario Council of Regents for Colleges of Applied Arts and Technology and Ontario Public Service Employees' Union*. See (31), *supra*. (74)*

Entitlement: union claiming company improperly denying employees on long term disability vacation pay and vacation bonus; grievance dismissed. *Re Molson's Brewery (Ontario) Limited and Canadian Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers, Local 304; policy grievance*, January 29, 1979. Curtis — 6 pages. (75)

Wages

Jury duty pay: clause in agreement providing pay only for time when employee would otherwise have been scheduled to work; grievor scheduled to work night shift but jury duty during the day; grievance dismissed. *Re Canada Ferro Company Limited and Local 1285, United Automobile Workers; MacFarlane grievance*, February 8, 1979. Brandt — 7 pages. (76)*

Sessional employees — not members of bargaining unit: whether they are "persons" for purposes of salary payment under collective agreement; grievance dismissed. *Re Cambrian College and Ontario Public Service Employees' Union; union grievance* February 23, 1979. Weatherill, McIntyre, McGivney — 7 pages. (77)*

Welfare Plans

Disability benefits — waiting period: whether disability due to previous accident or arising from illness and waiting period applicable; grievance dismissed. *Re American Can of Canada Limited and Can Workers' Federal Union, Local 535; Lawrence grievance*, January 31, 1979. Majority: Kennedy, Gray — 9 pages; dissent: Biggs — 1 page. (78)

Disability pension — total disability: onus of proof; whether grievor must be totally unable to do any work; grievance allowed. *Re Loblaw's Limited and Retail Clerks Union, Local 206; Curtis grievance*, February 1, 1979. Weatherill — 12 pages. (79)

Work Assignment

Bargaining unit work — supervisor performing work customarily performed only by bargaining unit employees, and peripheral to their main work; whether transfer into the bargaining unit; grievance dismissed. *Re Red-D-Mix Concrete Company and Teamsters Local Union 141; Williams grievance*, February 12, 1979. Majority: Brent, Petta — 13 pages; dissent: Kobryn — 5 pages. (80)

Reassignment after lay-offs: drivers assigned to do inspections previously done by maintenance men: lack of consultation; grievance dismissed. *Re Midland Superior Express Limited and Teamsters Union, Local 938; union grievance*, November 29, 1978. Majority: Teplitsky, Fosbery — 10 pages; dissent: Hurd; addendum: — 1 page. (81)

Union alleging supervisor required bargaining unit member to perform managerial function; grievance dismissed. *Re Silverwood Dairies and Canadian Union of Operating Engineers, Local 101; union grievance*, February 22, 1979. Majority: Weatherill, Salmon — 7 pages; dissent: Lang — 2 pages. (82)

The following awards in interest arbitration under *The Hospital Labour Disputes Arbitration Act* were also filed with the Commission during the month of February, 1979.

Cornwall Regional Hospital Linen Service and Local 1649E, Textile Workers' Union of America, Brown, Juneja — 10 pages; dissent: Edwards — 2 pages.

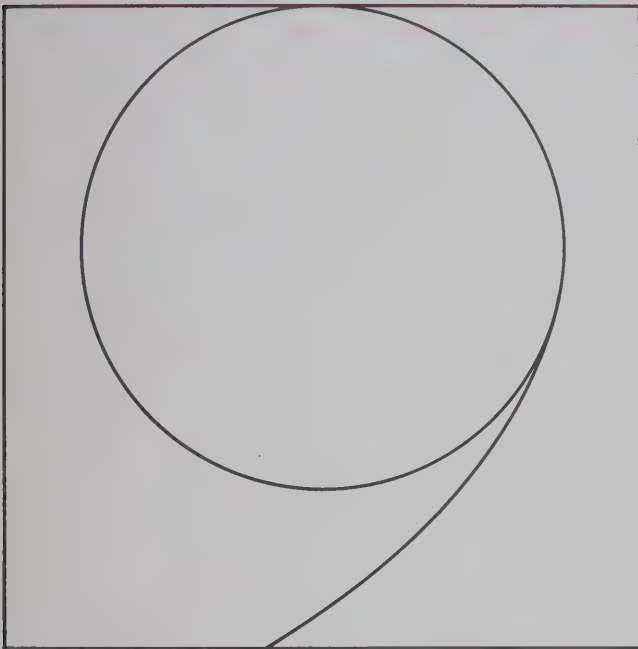
The Corporation of the Regional Municipality of Haldimand-Norfolk/Norview Home for the Aged and London and District Service Workers' Union, Local 220, Samuels — 23 pages; partial dissent: Billings — 1 page; partial dissent: Walsh.

Participating Hospitals in Paramedical Negotiations (Toronto East General Hospital) and Ontario Public Service Employees' Union, McIver, Wren — 4 pages; dissent: Cook — 2 pages.

Participating Hospitals in Paramedical Negotiations (Peterborough Civic Hospital) and Ontario Public Service Employees' Union, McIver, Cook — 4 pages; dissent: Wren — 3 pages.

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Monthly Bulletin



The Ontario Labour-Management
Arbitration Commission

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T.E. Armstrong, QC, Deputy Minister

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Arbitrator

The following person has been approved as chairman of boards of arbitration or single arbitrator pursuant to The Ontario Labour-Management Arbitration Commission Act and Ontario Regulation 635:

Mr. Ernest C. Potter, 44 Meadowcrest Road, Toronto, Ontario, M8Z 2Y7; telephone (416) 231-6333. (For arbitration cases under *The Hospital Labour Disputes Arbitration Act* only).

Awards

The following awards were filed with the Commission during the month of March, 1979, under Section 6(2) of Ontario Regulation 635, R.R.O. 1970.

The summary was prepared at the Faculty of Law, Queen's University, under the supervision of C.G. Simmons, B.A., B.C.L., LL.M., and K.P. Swan, B.Eng., LL.M.

* Indicates award to be reported in full or in part in *Labour Arbitration Cases*.

Arbitrability

Absence without leave — no notice of absence: whether violation of notification clause reverts grievor to status of new employee without recourse to grievance procedure; grievance not arbitrable. *Re The Board of Governors of Riverdale Hospital and Canadian Union of Public Employees, Local 43; Sullivan grievance*, February 28, 1979. Majority: Adell, Ronson — 19 pages; dissent: Tate — 4 pages; addendum: Ronson — 2 pages. (1)*

Discharge grievance — whether discharge removed from scope of grievance procedure by statutory regulations; arbitration adjourned pending decision of Divisional Court in similar case. *Re The Metropolitan Toronto Board of Commissioners of Police and Metropolitan Toronto Police Association; Cunningham grievance*, March 6, 1979. Brent — 11 pages. (2)*

Sick pay — entitlement to sick pay arose after commencement of lawful strike: no collective agreement in force during relevant period; grievance not arbitrable. *Re University of Windsor and Service Employees International Union, Local 210; Schachter grievance*, March 12, 1979. Barton — 9 pages. (3)

Reorganization of subjects into Departments within school: whether reorganization covered by a provision in agreement; grievance not arbitrable. *Re The Huron County Board of Education and Ontario Secondary School Teachers' Federation, District 45; policy grievance*, March 2, 1979. Majority: Hinnegan, Riddell — 5 pages; dissent: Knott. (4)

Classification

Improper classification alleged: extrinsic evidence heard to resolve "latest ambiguity" of unequivocal terms in agreement; grievance dismissed. *Re Beach Appliances International Limited and United Automobile Workers, Local 641; policy grievance*, February 28, 1979. McCaughey — 7 pages. (5)

Reclassification — union claiming employer improperly downgraded classification without changing essence of job; grievance dismissed. *Re Toronto Star Limited and Southern Ontario Newspaper Guild; union grievance*, March 12, 1979. Majority: Brent, Middleton — 12 pages; dissent: Tate — 3 pages. (6)

Collective Agreement

Illegality — whether a clause in collective agreement, the subject of this grievance, violates enabling statute: grievance not arbitrable. *Re Haldimand-Norfolk Board of Commissioners of Police and Haldimand-Norfolk Regional Police Association; union grievance*, February 28, 1979. Brent — 9 pages. (7)

Wage increase — calculation formula: effect of application to A.I.B.; grievance dismissed. *Re Ferranti-Packard Limited and United Steelworkers of America, Local 5788; union grievance*, March 1, 1979. Majority: O'Shea, Gilmore — 20 pages; dissent: Sharp — 1 page. (8)

Cost of Living Allowance

Expiry of collective agreement — application of freeze under Ontario Labour Relations Act s.70(1) to periodic C.O.L.A. increases as provided for in collective agreement: grievance allowed. *Re Canadian Industries Limited and United Steelworkers of America, Local 6350; union grievance*, February 7, 1979. Majority: Rayner, McVey — 9 pages; dissent: Churchill-Smith — 7 pages. (9)*

Damages

Hearing postponed for three months due to illness of union counsel — whether union responsible for losses suffered by grievor during this period: blame not to be assigned for "vicissitudes of the arbitration process"; damages payable for this period. *Re Consumers' Gas Company and International Chemical Workers Union, Local 161; Reid grievance*, March 7, 1979. Palmer, Healy, Simon — 13 pages. (10)

Demotion

Disciplinary demotion — grievor operating towmotor in careless manner; grievance allowed in part. *Re Phillips Cables Limited and United Steelworkers of America, Local 7276; Paterson grievance*, February 9, 1979. Adams — 6 pages. (11)

Elimination of classification — grievors were leaders of four man garbage details reduced to two men by change in pick-up procedure; employer affected subsequent demotion without reference to collective agreement procedure; grievance allowed. *Re City of Timmins, Corporation of and Canadian Union of Public Employees, Local 210; group grievance*, February 28, 1979. Majority: Brown, McVey — 13 pages; dissent: Gray — 5 pages. (12)

Discharge

Absence without leave: grievor repeatedly late for work and failing to notify employer of intended absences; grievance not arbitrable. *Re The Board of Governors of the Riverdale Hospital and Canadian Union of Public Employees*. See (1) *supra*. (13)*

Absence without leave — no notice given: collective agreement providing automatic loss of seniority; wife ill; grievance dismissed. *Re Dominion Forge Company Limited and Int'l Union, United Automobile Workers, Local 195; Rubik grievance*, January 15, 1979. Palmer — 8 pages. (14)

Absenteeism — culminating incident; grievance dismissed. *Re The Canadian Salt Company Limited and United Automobile Workers, Local 195; Easter grievance*, March 7, 1979. Barton — 10 pages. (15)

Assault by union official — serious injury to foreman; factors to consider when reviewing penalty; grievance dismissed. *Re Bundy of Canada Limited and United Auto Workers, Local 1285; Brooks grievance*, March 7, 1979. Fox — 10 pages. (16)

Assault — company alleging grievor threw hammer at fellow employee intending to hit her; intention not substantiated; suspension substituted. *Re Plastic Surface Finishers Limited and United Automobile Workers, Local 1090; Jones grievance*, March 13, 1979. Curtis — 9 pages. (17)

Assault — grievor holding knife to fellow employee's throat and endangering supervisor attempting to intercede: reinstatement without compensation. *Re Ford Motor Company of Canada Limited and United Automobile Workers, Local 707; Wright grievance*, February 2, 1979. Palmer — 10 pages. (18)

Carelessness — blood bank technician failing to follow procedures in several instances of blood typing errors; high standards expected in hospitals; grievance dismissed. *Re Toronto East General and Orthopaedic Hospital Inc. and Ontario Public Service Employees Union, Local 576; Zahoransky grievance*, March 1, 1979. Majority: Kennedy, Filion — 34 pages; dissent: Millard — 41 pages; addendum: Kennedy — 6 pages. (19)*

Carelessness — grievor damaging equipment and consuming alcohol on the job; grievance dismissed. *Re ITT Cannon Industries of Canada Limited, ITT Cannon Electric Canada Division and United Automobile Workers; Lee grievance*, February 26, 1979. Brown — 17 pages. (20)

Carelessness — grievor drove bus improperly: whether disregard of ordinary safety precautions giving employer absolute disciplinary discretion: reinstatement without compensation. *Re Hamilton Street Railway Company and Amalgamated Transit Union, Local 107; Danihel grievance*, March 5, 1979. Majority: Palmer, Bosnich — 11 pages; dissent: Mitchnick. (21)

Criminal conviction — whether employer improperly denied leave of absence for duration of jail term; grievance dismissed. *Re Standard Paper Box Limited and Canadian Paperworkers Union, Local 1335; O'Coin grievance*, March 28, 1979. Majority: Brown, Healy, Quaife — 9 pages. (22)

Culminating incident — grievor reporting in for work late and failing to provide adequate reasons for absences; grievance dismissed. *Re Neelson Casting Limited and United Steelworkers of America, Local 6363; Lecours grievance*, March 23, 1979. Majority: Sheppard, Ronson — 13 pages; dissent: Morgan. (23)

Culminating incident — inadequate notice of absence from work because of illness: discussion of circumstances under which past record can be considered; grievance allowed. *Re Bell Canada and Communications Union Canada; Nugent grievance*, March 16, 1979. Majority: M.G. Picher, Walsh — 6 pages; dissent: Healy — 2 pages. (24)

Culminating incident — past record: grievor's response to past discipline; reinstatement without compensation. *Re The Continental Group of Canada Ltd., Plant 533 and Canadian Chemical Workers Union; union grievance*, February 15, 1979. McCulloch, Askin, Gilmore — 15 pages. (25)

Dishonesty — grievor falsifying claim for holiday allowance: grievor having poor work record; grievance dismissed. *Re The Lake Ontario Steel Company Limited and United Steelworkers of America, Local 6571; Taylor grievance*, February 20, 1979. Majority: Palmer, Dixon — 4 pages; dissent: Barko. (26)

Falsification of employment application — unintentional concealment of medical condition: whether just cause; grievance allowed. *Re General Motors of Canada Limited and United Automobile Workers, Local 222; Landry grievance*, February 26, 1979. Palmer — 13 pages. (27)

Inadequate job performance — grievor complaining of physical inability to perform his job; grievance dismissed. *Re Ontario Hydro and Canadian Union of Public Employees, Ontario Hydro Employees' Union, Local 1000; Eylmann grievance*, March 12, 1979. Majority: Kennedy, Correll — 24 pages; dissent: Goudge — 6 pages. (28)

Insubordination — grievor absent without leave and addressing supervisor with abusive language: predecessor employer permitting wide latitude in grievor's work habits; suspension substituted. *Re Victoria Hospital Corporation and London and District Service Workers' Union, Local 220; Cathcart grievance*, January 24, 1979. Majority: Palmer, Switzman — 13 pages; dissent: Stewart. (29)

Insubordination — refusal to work: whether company may support discharge as alternative to allegation that grievor quit; suspension substituted. *Re North American Plastics Co. Ltd. and United Automobile Workers, Local 251; Richards grievance*, February 12, 1979. Rayner — 9 pages. (30)

Insubordination — requisite *mens rea* of grievor: intentionally evading learning of management order; grievance dismissed. *Re Town of Gravenhurst and Ontario Public Service Employees Union, Local 325; Pike grievance*, March 7, 1979. Majority: Linden, Buckland — 9 pages; dissent: Millard. (31)*

Insubordination — union committeeman refusing to return to work when ordered by his foreman: challenge to employer's authority; culminating incident; grievance dismissed. *Re Brown Fintube Engineering Limited and Heat Transfer Workers Union; Cockburn grievance*, November 7, 1978. Fox — 8 pages. (32)

Quit alleged: alternatively insubordination alleged; confrontation with supervisor; suspension substituted. *Re The Continental Group of Canada Limited, Paper Products Division and Canadian Paperworkers' Union, Local 1112; Elliott grievance*, March 7, 1979. Brown, Quaife, Storie — 18 pages. (33)

Quit alleged — whether grievor appreciated gravity of her actions; grievance allowed. *Re McGraw-Edison of Canada Limited and International Union of Electrical, Radio and Machine Workers, Local 595; Trimm grievance*, March 5, 1979. Dunn — 7 pages. (34)

Sleeping on the job: grievor sleeping away from work area in secluded spot during work hours; effect of similar cases in past; suspension substituted. *Re Noranda Metal Industries Limited and International Brotherhood of Electrical Workers, Local 2345; Near grievance*, March 15, 1979. Majority: O'Shea, Knipfel, Harris — 11 pages. (35)

Work performance — grievor treating students and academic staff in abrasive manner; no culminating incident present to justify examination of past record; grievance allowed. *Re Lambton College and Ontario Public Service Employees' Union; Arseneau grievance*, February 12, 1979. Palmer, Mason, Switzman — 10 pages; appendices — 17 pages. (36)

Work performance — sleeping on the job and lateness; grievor taking medication for epilepsy; suspension substituted. *Re Peel Memorial Hospital, Brampton, Ontario and Service Employees Union, Local 204; Kolkman grievance*, February 28, 1979. Majority: Brown, Acton — 15 pages; dissent: Stewart — 1 page. (37)

Discipline

Absence from workplace: whether company proved circumstances on balance of probabilities; grievance dismissed. *Re American Can of Canada Limited and Can Workers' Federal Unions; Clark grievance*, March 12, 1979. Majority: Brent, Herlihy — 11 pages; dissent: Biggs. (38)

Alleged illness — employer's right to require proof: onus on employee; grievance dismissed. *Re Dominion Stores Limited and Retail, Wholesale and Department Store Union, Local 414; Guarnaccia grievance*, March 7, 1979. Majority: Brown, White — 15 pages; dissent: Dahmer — 2 pages. (39)

Carelessness — driver of a front-end loader went into the ditch while unloading stones; no mechanical failure alleged; grievance dismissed. *Re City of Welland, Corporation of and United Electrical, Radio and Machine Workers of America, Local 517; Mariage grievance*, March 2, 1979. Majority: Hinnegan, Healy — 5 pages; dissent: Bosnich — 1 page. (40)

Carelessness — failure to properly supervise student nurse's administration of medication; grievance dismissed. *Re Windsor Western Hospital Centre (I.O.D.E. Unit) and Ontario Nurses' Association, Local 93; Hadden grievance*, January 24, 1979. Majority: Brunner, Bartlet — 20 pages; dissent: Paliare — 5 pages. (41)

Illegal strike — failure to work tantamount to illegal strike: written reprimand for engaging in deliberate restriction of operation; degree of proof; grievance allowed. *Re Canadian Timken Limited and United Steelworkers of America, Local 4106; Neil grievance*, March 15, 1979. Weatherill — 15 pages. (42)

Inattention to duty — effect of disciplinary record: grievance allowed in part. *Re Dow Chemical of Canada Limited and Oil, Chemical and Atomic Workers International Union, Local 9-672; MacDonald grievance*, March 22, 1979. Majority: Johnston, Healy — 12 pages; did not concur: Switzman. (43)

Insubordination — alleged failure of grievor to obey order to make emergency animal call; grievor may have not heard order and was demonstrably sick when he received a similar request soon after; grievance allowed. *Re Toronto Humane Society and Teamsters, Local 419; James grievance*, March 7, 1979. Majority: Brown, Weir — 14 pages; dissent: Mitchnick — 2 pages. (44)

Insubordination — company alleging grievor threatened supervisor with violence; grievance allowed. *Re Dominion Stores Limited and Retail, Wholesale and Department Store Union, Local 414; Johnston grievance*, March 7, 1979. Majority: Brown, Dahmer — 16 pages; dissent: White — 2 pages. (45)

Leaving work without permission: lack of production during shift; grievances dismissed. *Re Dominion Stores Limited and Retail, Wholesale and Department Store Union, Local 414; Crowder and Forsey grievances*, March 23, 1979. Weatherill, Dahmer, O'Toole — 10 pages. (46)

Leaving work without permission: sufficiency of warning of employer displeasure with reference to previous interviews between parties; grievance dismissed. *Re Air Canada and Canadian Air Line Employees' Association; anonymous grievance*, March 20, 1979. Simmons — 8 pages. (47)

Leaving work without permission — voluntary overtime shift: grievor left when denied lead hand pay; warning substituted. *Re Dominion Chain Company, Division of Welland Forge Limited and International Association of Machinists and Aerospace Workers, Local 1927; Sharpe grievance*, January 8, 1979. Majority: Palmer, Jardine — 8 pages; dissent: Lanz — 1 page. (48)

Union officials: allegation that steward not following grievance procedures and causing disharmony: grievance allowed. *Re North York General Hospital and Canadian Union of Public Employees, Local 1692; Carter grievance*, March 8, 1979. Adams, Adams, Singer — 13 pages. (49)

Work performance — leaving depot with newspapers before supplement inserted despite instructions to contrary; whether grievor's actions merely exercise of his judgement as to best interests of employer; grievance allowed. *Re Toronto Star Limited and Toronto Newspaper Guild, Local 87; McCarty grievance*, March 23, 1979. Majority: Linden, Tate — 8 pages; dissent: Middleton — 1 page. (50)

Estoppel

Working conditions — effect of past practice: whether acquiescence of employee to company practice binds union; grievance allowed. *Re Great Lakes Paper Company Limited and Lumber and Sawmill Workers Union, Local 2693; union grievance*, March 28, 1979. Majority: Dunn, Wren — 5 pages; partial dissent: Sanderson — 1 page. (51)

Grievance Procedure

Abandonment: whether undue delay alone sufficient; grievance arbitrable. *Re Canadian National Railway Company Telecommunications Department and Canadian Telecommunications Union, Division 43 of United Telegraph Workers; Pilon grievance*, January 12, 1979. Majority: Brunner, Switzman — 18 pages; dissent: Dinsdale — 4 pages. (52)

Estoppel — improper service of grievance on wrong employer representative; ostensible agency established by past practice; grievance arbitrable. *Re Cara Operations Limited and Hotel and Restaurant Employees and Bartenders International Union; Marcelino grievance*, March 13, 1979. Brunner, Tate, Sanderson — 14 pages. (53)

Policy grievance — discharge of one individual: whether outside range of policy grievance according to limitations of grievance provision; grievance dismissed. *Re Dahlstrom Canada Limited and United Steelworkers of America; policy grievance*, February 23, 1979. Beck — 6 pages. (54)

Time limits — extension: onus to demonstrate reasonable grounds; grievance dismissed. *Re Alcan Canada Products Limited, Aurora Works and United Steelworkers of America, Local 7193; Penny grievance*, March 5, 1979. Majority: Kennedy, Ronson — 7 pages; dissent: Robinson — 2 pages. (55)

Time limits — whether waived or extended for requesting arbitration: consideration of past practice, circumstances and possible prejudice; *Ontario Labour Relations Act*, s.37(5a); grievance arbitrable. *Re Windsor Bumper Division, Gulf and Western (Canada) Limited and United Automobile Workers, Local 195; Murgic grievance*, March 14, 1979. Ianni — 12 pages. (56)

Timeliness: failure of union nominee to agree upon chairman; whether s.37(5a) of *Ontario Labour Relations Act* applies; grievance not arbitrable. *Re Consumers Distributing Company and Teamsters, Local 419; Singh grievance*, February 13, 1979. Majority: Palmer, MacDermid — 11 pages; dissent: Cwitco. (57)

Holiday Pay

Entitlement — grievor claiming pay for statutory holidays during period he was away from work collecting Workmen's Compensation; grievance dismissed. *Re County of Renfrew, Corporation of and Canadian Union of Public Employees, Local 1508; Riley grievance*, March 12, 1979. Scott, Martin, Sirois — 4 pages. (58)

Illness

Proof of fitness for work — employer demand for medical evidence of fitness to continue employment: claim for expenses and lost wages; employer rules not brought to employee's attention; grievance allowed. *Re Elk Lake Planing Mill Limited and Lumber and Sawmill Workers' Union, Local 2995; Boucher grievance*, January 21, 1979. Majority: Willes, Wren — 7 pages; dissent: Grant — 2 pages. (59)

Job Posting

Vacancies resulting from filling of posted job: whether collective agreement requires further posting; grievance dismissed. *Re Newell Manufacturing Company Limited and United Steelworkers of America, Local 4210; union grievance*, March 3, 1979. Majority: Palmer, Addario — 6 pages; dissent: Taylor. (60)

Job Vacancy

Replacing foreman on holidays: whether a promotion or a temporary transfer; grievance dismissed. *Re Borough of Scarborough, Corporation of and Scarborough Civic Employees' Union, Local 368, Canadian Union of Public Employees; Macintosh grievance*, February 23, 1979. Majority: Schiff, Sanderson — 7 pages; dissent: Wren — 4 pages. (61)

Lay-Off

Bumping — whether collective agreement permits "bumping upward": grievance dismissed. *Re St. Michael's Shops of Canada Limited and Retail Clerks International Union, Local 206; Hedegaard grievance*, March 14, 1979. Majority: Aggarwal, Furlong — 18 pages; dissent: Strickland. (62)*

Grievor bumped into junior classification and was then laid off because his work was unsatisfactory; whether bumping to classification or learner position; whether grievor qualified; grievance dismissed. *Re Babcock and Wilcox Canada Limited and United Steelworkers of America, Local 2859; Robinson grievance*, February 12, 1979. Majority: Palmer, McNaughton — 9 pages; dissent: Wightman. (63)

Seniority — grievor seeks redress for lay-off while junior employee of similar skills employed; grievor was offered the job and refused; grievance dismissed. *Re Spruce Falls Power and Paper Co. Ltd. and Lumber and Sawmill Workers' Union, Local 2995; Stewart grievance*, February 14, 1979. Majority: Brunner, Bernardo — 17 pages; dissent: Wren — 3 pages. (64)

Overtime

Distribution — overtime allotted to employee on basis of shift worked rather than job done; grievor had been performing requisite job and had less accumulated overtime; grievance allowed. *Re Standard Tube Canada Limited and United Automobile Workers, Local 636; Lamb grievance*, March 6, 1979. Brandt — 6 pages. (65)

Entitlement — whether all overtime must be offered to regular employees before being offered to "spares"; grievance allowed. *Re Kelsey-Hayes Canada Limited and United Automobile Workers, Local 195; union grievance*, May 8, 1978. Ord — 9 pages. (66)

Implementation of previous award: union arguing s.25 of *The Employment Standards Act* applicable such that hours worked in excess of forty-four per week considered overtime; grievance allowed. *Re The International Nickel Company of Canada Limited and Canadian Guards Association, Local 105; union grievance*, February 28, 1979. Majority: Brown, Werry — 10 pages; dissent in part: McVey — 2 pages. (67)

Remedies — make work scheme offered by employer in lieu of damages; low priority work unsuitable compensation for lost opportunities; grievance allowed. *Re Dow Chemical of Canada Limited and Oil, Chemical and Atomic Workers International Union, Local 9-672; policy grievance*, February 28, 1979. Majority: Gorsky, Walsh — 10 pages; dissent: Healy — 2 pages. (68)

Promotion

Competing applicants for job vacancy — grievor alleges discrimination by promotion from outside bargaining unit; grievance dismissed. *Re The International Nickel Company of Canada Limited and Canadian Guards Association, Local 105; Switch grievance*, February 23, 1979. Majority: Palmer, Sanderson — 12 pages; dissent: McVey. (69)

Competing applicants for job vacancy — whether grievor entitled through seniority to trial period by collective agreement; grievance allowed. *Re Genaire (1961) Limited and United Automobile Workers, Local 199; Pierce grievance*, March 13, 1979. Rayner — 5 pages. (70)

Procedure — whether grievor may take competitive exam for job vacancy despite deficiency in application form; whether employer obligated to look behind application form to discover if applicant possesses requisite qualifications; grievance dismissed. *Re Metropolitan Toronto, Municipality of and Canadian Union of Public Employees, Local 43; Lett grievance*, February 26, 1979. Majority: Gorsky, Riggs — 6 pages; dissent: Tate — 4 pages. (71)

Qualifications — education: whether grievor fulfilled educational requirement of "Grade 13 or equivalent"; grievance dismissed. *Re City of London, Corporation of and Canadian Union of Public Employees, Local 101; Monk grievance*, March 28, 1979. Majority: Dunn, Noble — 6 pages; dissent: Martin — 2 pages. (72)

Qualifications — examinations: grievors claiming employer failed to comply with proper procedures for promotional examinations for rank of captain; grievance allowed. *Re City of Peterborough, Corporation of and Peterborough Professional Fire Fighters Association, Local 519; Brown and union grievances*, March 9, 1979. Brown — 53 pages. (73)

Qualifications — junior employees appointed to posted job involving "responsibility for supervision"; employer failing to show reasonable basis for its opinion that junior applicants better qualified than grievor; grievance allowed. *Re Ontario Hydro and Canadian Union of Public Employees, Ontario Hydro Employees' Union, Local 1000; Mitchell grievance*, February 14, 1979. Majority: Adell, Goudge — 16 pages; did not concur: Fenton — 4 pages. (74)

Qualifications — potential ability: whether ability must exist at date of application; effect of training period provision; grievance dismissed. *Re Chicago Rawhide Products, Canada Limited and United Automobile Workers, Local 397; Murphy grievance*, March 6, 1979. Brandt — 9 pages. (75)*

Qualifications — seniority prevails if applicant can establish qualifications; collective agreement language not requiring comparison of applicants skills and ability; grievance allowed. *Re Borough of North York, Corporation of and North York Civic Employees' Union, Local 94, Canadian Union of Public Employees; Fike grievance*, February 28, 1979. Brown — 19 pages. (76)

Qualifications — whether employer acting in discriminatory, arbitrary manner in selection of successful candidate; grievance dismissed. *Re Metropolitan Toronto, Municipality of and Canadian Union of Public Employees, Local 43; Clarke grievance*, January 12, 1979. Majority: Willes, Perron — 16 pages; dissent: Tate — 6 pages. (77)

Qualifications — whether grievor had skill and experience equal to that of successful applicants for lead hand jobs: arbitration board's jurisdiction to substitute its opinion for that of management; grievance dismissed. *Re Atomic Energy of Canada Limited and Chalk River Nuclear Process Operators' Union, Local 1601; Power grievance*, January 18, 1979. Majority: Rayner, Sanderson — 11 pages; addendum: Sanderson — 1 page; did not concur: Jones. (78)*

Qualifications — whether grievor possessing adequate communication skills; grievance dismissed. *Re City of Hamilton, Corporation of and Canadian Union of Public Employees, Local 167; Southern grievance*, February 28, 1979. Teplitsky — 6 pages. (79)

Recall

Qualifications: extra classification work available; whether collective agreement limits job classifications; grievance allowed. *Re Falconbridge Nickel Mines Limited and Sudbury Mine, Mill and Smelter Workers Union, Local 598; St. Jean grievance*, February 2, 1979. Majority: Brunner, Tester — 13 pages; dissent: Valin — 3 pages. (80)*

Seniority — junior employee retained to fill job vacancy at expense of qualified senior employee on lay-off: whether "open job" requirement in collective agreement means increase in work force; grievance allowed. *Re Westinghouse Canada Limited and United Electrical, Radio and Machine Workers of America, Local 546; McMahon grievance*, January 22, 1979. Majority: Rayner, Greenwood — 10 pages; dissent: Kacur — 2 pages. (81)

Remedies

Board's direction requiring publication of apology in union newsletter: whether fulfilled; apology held sufficient. *Re City of London, Corporation of and London Civic Employees Union, Local 107; supplementary award*, March 2, 1979. Majority: Kruger, Parker — 4 pages; dissent: Mitchnick — 2 pages; Exhibit — 5 pages. (82)

Reporting Pay

Entitlement: insufficient notice of lay-off: grievor claiming eight hours pay; grievance allowed. *Re Inter-City Truck Lines Limited and Teamsters Union, Local 938; Lang grievance*, January 8, 1979. Palmer, Marinelli, Singleton — 9 pages. (83)

No work available — whether situation beyond company's control: effect of work available in other departments; grievance dismissed. *Re Irwin Industries Canada Limited and International Association of Machinists and Aerospace Workers; Mills grievance*, March 9, 1979. Majority: Brunner, Hagan — 9 pages; dissent: Tate — 5 pages. (84)

Retirement

Compulsory retirement — application to extend employment: blanket prohibition on post-retirement employment; whether applications must be considered individually; grievance allowed. *Re University of Windsor Faculty Association and Board of Governors of the University of Windsor; group grievance*, March 1, 1979. Simmons — 31 pages. (85)

Scheduling of Work

Creation of new work shift: whether collective agreement precludes management decision; reasonableness of decision; grievance dismissed. *Re The Haldimand-Norfolk Board of Commissioners of Police and The Haldimand-Norfolk Police Association; union grievance*, February 28, 1979. Brent — 11 pages. (86)

Shift schedules — 20 hours notice required for impending change: whether notice applies to hours of work on each shift or only to transfers between shifts; grievance dismissed. *Re Somerville Belkin Industries Limited and Canadian Chemical Workers Union, Local 30; Halley grievance*, March 16, 1979. Majority: Burkett, Filion — 13 pages; dissent: Wohl — 1 page. (87)

Variation of shift — employees required to work Tuesday to Saturday on intermittent basis; grievors claimed such order could not be made unilaterally or alternatively over-time pay for Saturdays was necessary; grievance dismissed. *Re Union Carbide Canada Limited and Oil, Chemical and Atomic Workers International Union, Local 9-593; group grievance*, February 14, 1979. Edwards, McCuaig, Kelly — 19 pages. (88)

Seniority

Calculation — agreed seniority date for persons added to bargaining unit: whether "present practice" existing; grievance dismissed. *Re Joseph E. Seagram and Sons and The Distillery, Rectifying, Wine and Allied Workers' International Union of America, Local 73; Delmarr grievance, policy grievance*, March 5, 1979. Majority: Palmer, Sanderson — 13 pages; dissent: Hogan. (89)

Recalculation — whether new agreement providing for recalculation of seniority on retroactive basis; grievance dismissed. *Re Versa-Care Centre of Owen Sound and Ontario Nurses' Association; union grievance*, February 21, 1979. Majority: Brunner — 14 pages; dissent in part: Richards — 3 pages; dissent in part: Metcalfe — 1 page. (90)

Sick Pay

Pregnancy — grievor absent from work due to "disability": danger of miscarriage during first trimester; grievance allowed. *Re Clinton Public Hospital and Ontario Nurses' Association, Local 182; Sutherland grievance*, March 7, 1979. Brunner, Richards, Werry — 7 pages. (91)*

Transfer

Grievor claiming payment of travel allowance under collective agreement: grievance dismissed. *Re Bell Canada and Communication Workers of Canada; Baxter grievance*, March 14, 1979. Majority: Simmons, Healy — 6 pages; did not concur: Switzman. (92)

Qualifications — whether three-day orientation period sufficient to enable grievor to meet normal job requirements; grievance dismissed. *Re Westinghouse Canada Limited and United Electrical, Radio and Machine Workers of America, Local 504; Magill grievance*, March 28, 1979. Majority: Brown, Kacur — 16 pages; dissent: Greenwood. (93)

Seniority: junior employee given lateral transfer; whether breach of collective agreement provision; grievance dismissed. *Re Borough of North York, Corporation of and North York Civic Employees' Union, Local 94, Canadian Union of Public Employees; Geddes grievance*, February 28, 1979. Brown — 11 pages. (94)

Union Officials

Leave for union activities: employer's right to deny leave; whether denial arbitrary or unreasonable; grievance dismissed. *Re Dupont of Canada Limited and Canadian Chemical Workers Union, Local 28; Bolduc grievance*, March 26, 1979. Majority: Kennedy, Binning — 7 pages; dissent: Kelly — 1 page. (95)

Union Rights

Whether employees entitled to meet with committeeman immediately following a request: whether supervisor unreasonably withheld permission for immediate meeting; grievance dismissed. *Re Ladish Company of Canada Limited and International Association of Machinists and Aerospace Workers, Local 1936; policy grievance*, March 23, 1979. Majority: O'Shea, Jardine, Storie — 13 pages. (96)

Wages

Entitlement for period plant closed due to power shortage: whether guarantee of hours; grievance dismissed. *Re Canadian Salt Company Limited and United Automobile Workers, Local 240; group grievance*, August 24, 1977. Gorsky — 6 pages. (97)

Jury duty pay — additional monies received by jurors above normal jury fee: whether additional allowance falling under "compensation for services" to be refunded to employer or under "allowances for expenses incurred"; grievance allowed. *Re Metropolitan Toronto, Municipality of and Canadian Union of Public Employees, Local 43; Vukichevich grievance*, March 6, 1979. Majority: Teplitsky, Tate — 5 pages; dissent: Riggs — 4 pages. (98)

Temporary voluntary transfer — school principal assigned to another position pending outcome of drug related charges; parties ordered to negotiate new salary. *Re Halton Board of Education and Ontario Public School Men Teachers' Federation; Kearns grievance*, February 26, 1979. Teplitsky, McKillop, Trower — 7 pages. (99)

Welfare Plans

Entitlement — employee receiving sickness and accident benefits under old agreement: whether automatically included under new agreement for purposes of long-term disability benefits; grievance dismissed. *Re Windsor Bumper Division, Gulf and Western (Canada) Limited and United Automobile Workers, Local 195. See (56) supra*. (100)

Entitlement — grievor on pregnancy leave: whether employer entitled to recover welfare premiums paid while employee on leave; grievance allowed. *Re Town of Hawkesbury, The Corporation of and Canadian Union of Public Employees, Local 1026; Lahaie grievance*, March 1, 1979. Majority: Abbott, Henry — 9 pages; dissent: Emond. (101)

Entitlement to payment of premiums by employer: grievor absent on Workmen's Compensation and subsequently laid-off; grievance dismissed. *Re Seneca Manufacturing (St. Catharines) Limited and United Automobile Workers, Local 199; Leva grievance*, March 16, 1979. Weatherill — 6 page. (103)

Work Assignment

Assignment of certain work to another classification: no job descriptions in collective agreement; whether safety factor is relevant; grievance dismissed. *Re Union Carbide Canada Limited and United Electrical, Radio and Machine Workers of America, Local 523; group grievance*, March 16, 1979. Majority: Hinnegan, Orsini — 7 pages; dissent: Bosnich — 1 page. (103)

Bargaining unit work — non-bargaining unit employee performing bargaining unit work contrary to collective agreement; whether work normally performed by bargaining unit; whether performance directly results in lay-off; grievance dismissed. *Re Falconbridge Nickel Mines Limited and United Steelworkers of America, Local 6855; Caverley grievance*, February 27, 1979. Majority: Hinnegan, Bennett — 6 pages; dissent: McVey. (104)

Grievors claiming work assignment not within new job classification: whether any express restriction on managerial right to assign work to new classification; grievance dismissed. *Re Holmes Foundry Limited and United Automobile Workers, Local 456; group grievance*, March 6, 1979. Hinnegan — 8 pages. (105)

Non-bargaining unit employees given work: whether warehouse subject to collective agreement; whether work normally performed by non-bargaining unit personnel; grievance dismissed. *Re Dow Chemical of Canada Limited and Oil, Chemical and Atomic Workers' International Union, Local 9-672; union grievance*, March 16, 1979. Betcherman, Healy, Walsh — 8 pages; addendum: Healy — 2 pages. (106)

The following awards in interest arbitration under *The Hospital Labour Disputes Arbitration Act* were also filed with the Commission during the month of March, 1979.

Altamont Nursing Home Limited and Ontario Nurses' Association, Fraser, Walsh — 13 pages; dissent: Furlong — 3 pages; addendum: Walsh — 2 pages.

Madoc Manor Lodge and Retirement Home and Pharmacists and Professional Employees' Association, Local 1976, Baum, McCormick, McKinnon — 6 pages.

The Hospital Commission, Sarnia General Hospital and Office and Professional Employees' International Union, Local 347, Teplitsky — 6 pages; dissent: Beaulieu — 1 page; dissent: McNaughton — 2 pages.

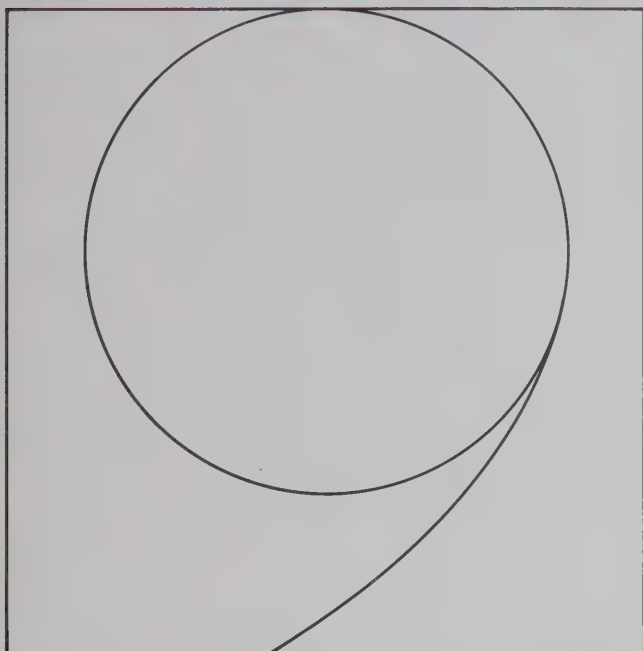
Sun Haven Nursing Home Ltd. and London and District Service Workers' Union, Local 220, (Employees in the Township of Delaware), Baum, Hogan, Switzman — 32 pages.

Filing Awards

The attention of chairmen of boards of arbitration and sole arbitrators is drawn to the provision of Section 6(2) of the Regulation, which reads: 6.—(2) Every arbitrator shall, within ten days of issuing an award, file a copy thereof with the Commission. This provision would apply to all arbitrators approved under The Ontario Labour-Management Arbitration Commission Act and regardless of whether they were appointed as chairmen or sole arbitrators pursuant to the Act, by the parties or by the Minister.

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Ontario

The Ontario Labour-Management
Arbitration Commission

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Awards

The following awards were filed with the Commission during the month of April, 1979, under Section 6(2) of Ontario Regulation 635, R.R.O. 1970.

The summary was prepared at the Faculty of Law, Queen's University, under the supervision of C.G. Simmons, B.A., B.C.L., LL.M., and D.D. Carter, B.A., B.C.L., LL.B.

*Indicates award to be reported in full or in part in *Labour Arbitration Cases*.

Arbitrability

Abandonment — prior hearing cancelled by union nominee; notice indicating grievance otherwise disposed of; grievance not arbitrable. *Re Dominion Stores Limited and Retail, Wholesale and Department Store Union, Local 414; Leneeuw grievance*, April 6, 1979. Majority: O'Shea, White — 10 pages; dissent: Spaxman. (1)

Employee status — whether grievor is employee or independent contractor: discussion of principles to be considered; grievance dismissed. *Re City of Sarnia, Corporation of (Marshall Gowland Manor) and London and District Service Workers' Union, Local 220; McArthur grievance*, April 23, 1979. Majority: Hinnegan, Furlong — 11 pages; did not concur: Switzman. (2)

Union wishing to include additional questions: not properly processed through previous steps of procedure; additional questions not arbitrable. *Re Metropolitan Toronto, Municipality of and Canadian Union of Public Employees, Metropolitan Toronto Civic Employees Union, Local 43; union grievance*, March 30, 1979. Majority: Schiff, Riggs — 10 pages; dissent: Tate — 3 pages. (3)*

Bargaining Unit

Employee functions — office employee performing inventory control functions: previously performed by employees within unit; grievance allowed. *Re Gilbarco Canada Limited and Canadian Union of Golden Triangle Workers; union grievance*, April 16, 1979. Simmons — 15 pages. (4)*

Managerial exclusions — employees hired as foreladies performed no management functions: held to be lead hands and within the unit; grievance allowed. *Re Mr. Sabre of Canada Limited and Toronto Joint Board Amalgamated Clothing and Textile Workers Union; union grievance*, April 10, 1979. Arthurs — 7 pages. (5)

Call Back Pay

Stand-by status — agreement called for minimum guarantee of work if called; employer calculated minimum at overtime rate to reduce actual time worked; grievance dismissed. *Re Greater Niagara General Hospital and Ontario Nurses' Association; policy grievance*, May 5, 1979. Majority: Rayner, Richards — 7 pages; did not concur: McKillop. (6)

Classification

Reclassification — previously separate jobs within job description now performed simultaneously by one employee: whether new job created; grievance allowed. *Re Canadian Broadcasting Corporation and National Association of Broadcast Employees and Technicians; union grievance*, March 28, 1979. O'Shea — 31 pages. (7)

Collective Agreement

Agreement amended: whether effective date of cost of living allowance altered; grievance dismissed. *Re Canadian Transit Company and Teamsters, Chauffeurs, Warehousemen and Helpers, Local 880; union grievance*, April 4, 1979. Majority: Brent, Bartlett — 10 pages; dissent: Kobryn (8)

Contracting Out

Limitations — employees could not do work within a reasonable time period: no violation of collective agreement; grievance dismissed. *Re Motor Wheel Corporation of Canada Limited and United Automobile Workers, Local 127; union grievance*, March 22, 1979. Rayner — 7 pages. (9)

Damages

Bonus — whether calculation of damages should include bonus based on productivity: discussion of principles to be considered in awarding damages; grievance allowed. *Re Falconbridge Nickel Mines Limited and Sudbury Mine, Mill, and Smelter Workers Union, Local 598; Richer grievance*, April 19, 1979. Majority: Brown, Tester — 17 pages; partial dissent: Gordon — 11 pages. (10)*

Maternity leave — grievor misinformed by employer about the timing of her leave: mistake resulted in loss of unemployment insurance benefits; grievance allowed. *Re Extendicare Limited and Service Employees Union, Local 183; Byford grievance*, April 12, 1979. Majority: Linden, Cooke — 8 pages; did not concur: Bernardo. (11)

Overtime — parties unable to agree on compensation to be paid to grievor for overtime he would have worked: company ordered to produce records from which to calculate average overtime worked by grievor's fellow mechanics during time in question. *Re Wardair Canada (1975) Limited and International Association of Machinists and Aerospace Workers; Scott grievance*, April 11, 1979. O'Shea — 3 pages. (12)

Promotion grievance — matter referred back to company to review qualifications of applicant: whether damages should be calculated from date of original grievance or from date when grievor was finally chosen; grievance allowed. *Re Falconbridge Nickel Mines Limited and Sudbury Mine, Mill, and Smelter Workers Union, Local 598*. See (10) *supra*. (13)*

Demotion

Re-classification from District Representative to Assistant District Representative before six month trial period had elapsed: consideration of principles involved in deciding whether employer properly cut short trial period; grievance allowed in part. *Re Toronto Star Newspaper Limited and Southern Ontario Newspaper Guild; Edmonds grievance*, March 2, 1979. Teplitsky, Smith, Carter — 5 pages. (14)

Discharge

Absence from work — grievor overstayed lunch period at outside job site: influence of grievor's lead hand, grievor's disciplinary record and other mitigating factors considered; reprimand substituted. *Re Campbell Steel and Iron Works Limited and United Steelworkers of America, Local 14856; Pratt grievance, main award*. April 3, 1979. Abbott — 9 pages. (15)

Absent without leave — failure to notify company when unable to report for duty: sufficiency of warnings under company rules; grievance allowed. *Re Bondy Cartage Limited and Teamsters, Chauffeurs, Warehousemen and Helpers Union, Local 880; Campion grievance*, April 11, 1979. Brent, Kobryn, McCrindle — 6 pages. (16)

Absenteeism — illness or culminating occasion substantiated by grievor's physician: whether discharge warranted on general absence record; grievance allowed. *Re Alcan Canada Foils, Division of Alcan Canada Products Limited and Printing Specialties and Paper Products Union, Local 466; Jenkinson grievances*, April 2, 1979. Majority: Kennedy, Geiger — 17 pages; dissent: Paulin — 4 pages. (17)

Absenteeism — innocent and culpable absenteeism demonstrated; evidence of psychiatric problems and criminal assault on personnel manager admitted by grievor; grievance dismissed. *Re Herb Fraser and Associates Limited and United Steelworkers of America, Local 7022; Fetz grievance*, May 19, 1979. Majority: Rayner, Cameron — 13 pages; partial dissent: Moreau — 4 pages. (18)

Absenteeism — poor attendance record over three year period; absences mostly without leave and not for health reasons; grievance dismissed. *Re Eldorado Nuclear Limited and United Steelworkers of America, Local 13173; Hadwyn grievance*, April 23, 1979. O'Shea — 14 pages. (19)

Absenteeism: whether adequate notification and explanation given: reinstatement without compensation. *Re Livingston Industries Limited (Tillsonburg Factory) and International Woodworkers of America; DeSutter grievance*, April 6, 1979. Majority: Brunner, Marcantonio — 16 pages; dissent: Wakely. (20)

Abusive language and carelessness resulting in damage to vehicles: lesser penalty substituted. *Re Concrete Construction Supplies of Windsor Limited and Teamsters, Chauffeurs, Warehousemen and Helpers Union, Local 880; Dewhurst grievance*, March 5, 1979. Majority: Stewart, Kobryn — 23 pages; dissent: Marentette — 10 pages. (21)

Assault on supervisor — consideration of severity of the attack and possible mitigating circumstances: grievance dismissed. *Re Canadian Car Division Hawker Siddeley Canada Ltd. and United Automobile Workers, Local 1075; Barker grievance*. April 27, 1979. Hinnegan — 12 pages. (22)

Assault — physical assault on foreman: provocation alleged; relationship between parties considered; reinstatement without compensation. *Re ITT Aimco Division and United Steelworkers of America; Coholic grievance*. April 16, 1979. Weatherill — 9 pages. (23)

Breach of faith — confidential hospital records disclosed to private investigator: lesser penalty substituted. *Re Metropolitan General Hospital and Ontario Nurses' Association; Todd grievance*, March 29, 1979. Majority: Brunner, Bartlet — 19 pages; dissent: Paliare — 7 pages. (24)*

Conflict of interest alleged — grievor removed from assignment; statements made to rival press organization and government inquiry; grievance allowed in part. *Re Canadian Broadcasting Corporation and Canadian Wire Service Guild, Local 213 of the Newspaper Guild; Ferguson grievance*, April 2, 1979. Arthurs — 16 pages. (25)

Grievor discharged for absenteeism but reinstated with conditions: whether failure to meet conditions sufficient grounds for subsequent discharge; grievance dismissed. *Re Falconbridge Nickel Mines Limited and Sudbury Mine, Mill and Smelter Workers Union, Local 598; Rocca grievance*, April 6, 1979. Majority: Brown, Valin — 27 pages; dissent: McIntyre — 4 pages. (26)

Insubordination — provocation alleged: grievor discriminated against; grievor calculated to frustrate employer's orders; suspension substituted. *Re Alpha Graphics Limited and Toronto Typographical Union, Local 91; Rasky grievance*, April 17, 1979. Majority: Ellis, Russell — 30 pages; dissent: Scott. (27)

Intimidation — grievor threatened foreman: poor disciplinary record; sufficiency of warning under plant rules; grievance dismissed. *Re Allen Industries Canada Limited and United Automobile Workers; McKee grievance*, April 17, 1979. Weatherill — 9 pages. (28)

Lateness — culminating incident: discussion of requirement to show culminating incident: discussion of principles of discipline in employment relationship; grievance dismissed. *Re Toronto Star Newspapers Limited and Southern Ontario Newspaper Guild; Rupke grievance*, April 12, 1979. Prichard — 18 pages. (29)

Leaving work early — other employees punching out: repeated occurrences; grievance dismissed. *Re Chubb Security Systems, A Division of Chubb Industries Limited and International Brotherhood of Electrical Workers, Local 773; Ryall and Jamieson grievances*, April 9, 1979. Majority: O'Shea, Sargeant — 12 pages; dissent: Wacheski. (30)

Non-disciplinary discharge — extended absences over period of six years — employer unwilling to reinstate grievor: whether medically fit; grievance allowed with conditions. *Re Sherman Mines, Cliffs of Canada, Limited, Manager and United Steelworkers of America, Local 6896; Cote grievance*, April 2, 1979. Hinnegan — 10 pages. (31)

Non-disciplinary discharge — grievor allegedly medically unfit: whether likely to be able to work in future; grievance dismissed. *Re Hilroy Limited and Canadian Paperworkers Union, Local 1144; Rulli grievance*, April 6, 1979. Majority: Brown, Easdale — 34 pages; dissent: Fagan — 1 page. (32)

Off-duty conduct — grievor causing disturbance in staff house maintained by company: whether discipline permissible within employment relationship; grievance allowed. *Re Ontario Hydro and Canadian Union of Public Employees, Ontario Hydro Employees' Union, Local 1000; Minnings grievance*, April 4, 1979. Majority: Kennedy, Goudge — 16 pages; dissent: Brady — 2 pages. (33)*

Possession of marijuana at work: inconsistent application of rules alleged; reinstatement without compensation. *Re Indalloy Division of Indal Limited and United Steelworkers of America, Local 2729; Mapes grievance*, April 9, 1979. Kennedy — 10 pages. (34)*

Smoking in non-designated area — collective agreement providing for discharge: whether grievor was smoking; grievance dismissed. *Re T.G. Gale Ltd. and United Automobile Workers, Local 222; Leblance grievance*, April 24, 1979. O'Shea — 11 pages. (35)

Theft — grievor stole company property: value of goods and grievor's work record considered in assessing penalty; reinstatement without compensation. *Re Millhaven Fibres Limited and Oil, Chemical and Atomic Workers International Union, Local 9-670; Jackson grievance*, April 17, 1979. Majority: Swan, Pratt — 13 pages; partial dissent: Clawson — 1 page. (36)

Theft of company property — second offence in 3½ years: whether appropriate case for substitution of lesser penalty; grievance dismissed. *Re Bell Canada and Communications Union Canada; E.M.P. grievance*, April 25, 1979. Majority: Kennedy, Gray — 16 pages; dissent: Herman — 2 pages. (37)*

Theft of coveralls alleged: employees commonly taking coveralls home to wash; grievance allowed. *Re Swift Canadian Co. Ltd. and Canadian Food and Allied Workers, Local P1105; Wittman grievance*, March 12, 1979. Majority: Beck, Walsh — 9 pages; dissent: Sanderson — 2 pages. (38)

Discipline

Abnormally high absenteeism for overtime shift: grievor's excuse not accepted; concerted action alleged; grievance dismissed. *Re Canadian Timkin Limited and United Steelworkers of America, Local 4906; Dale grievance*, April 4, 1979. Brown — 17 pages. (39)

Absenteeism — grievor failing to obtain medication for illness: employer requiring medical certificate for further absences; grievance allowed in part. *Re Dominion Stores Limited and Retail, Wholesale and Department Store Union, Local 414; Balvers grievance*, April 5, 1979. O'Shea, Dahmer, White — 14 pages. (40)

Disobedience of orders — driver returning home during layover at foreign terminal; whether permitted by collective agreement; grievance dismissed. *Re Inter-City Truck Lines Limited and Teamsters Union, Local 880; Griffiths grievance*, March 29, 1979. Curtis, Kobryn, Fosberry — 13 pages. (41)

Failure to report for work — deliberateness in issue where company alleged collusion among absent employees; sufficiency of evidence; grievance allowed. *Re Timken Limited and United Steelworkers of America, Local 4906; Graves grievance*, April 9, 1979. Abbott — 11 pages. (42)

Grievor using abusive language toward supervisor and destroying company property by kicking glass door: lesser penalty substituted. *Re The Toronto Star Newspapers Limited and The Toronto Newspaper Guild, Local 87 of the Southern Ontario Newspaper Guild; McCarty grievance*, April 25, 1979. Baum, Tate, Middleton — 12 pages; addendum: Tate — 2 pages. (43)

Insubordination — refusal to perform "related duty": violent outburst directed at superiors; grievance dismissed. *Re Dominion Chain Company, Division of Welland Forge Limited and International Association of Machinists, and Aerospace Workers; Jones grievance*, April 5, 1979. Majority: O'Shea, Nightingale — 15 pages; dissent: Jardine. (44)

Refusal to work — employee on light duties: no valid reasons advanced; grievance dismissed. *Re Continental Group of Canada Limited, Plant 533, London and Canadian Chemical Workers Union, Local 69; Fox grievance*, April 6, 1979. Majority: Rose, Phelps — 15 pages; dissent: Askin. (45)

Theft alleged — grievor given hospital supplies by another employee: lesser penalty substituted. *Re North York General Hospital and Canadian Union of Public Employees, Local 1692; Duhaney grievance*, March 28, 1979. Majority: O'Shea, Maguire — 9 pages; dissent: Griffin. (46)

Verbal and physical abuse of supervisor alleged: truth of allegations of physical abuse; lesser penalty substituted. *Re Kanmet, A Division of Massey-Ferguson Industries Limited and International Molders and Allied Workers Union, Local 194; Lindhurst grievance*, April 5, 1979. Rose — 7 pages. (47)

Grievance Procedure

Compliance — mandatory carriage of grievance by union grievance committee before proceeding to arbitration: substantial compliance or waiver of requirements not demonstrated; grievance not arbitrable. *Re Metropolitan Wire (Canada) Limited and Laundry and Linen Drivers and Industrial Workers, Teamsters Local Union 847; Raposa grievance*, March 27, 1979. Majority: Rayner, Wace — 14 pages; dissent: Simon — 2 pages. (48)

Timeliness — discharge grievance: reasonableness of time limitations, due diligence of union, lack of formal grievance structure and nature of grievance considered; *Labour Relations Act* s. 37(5a) applied; grievance arbitrable. *Re Campbell Steel and Iron Works Limited and United Steelworkers of America, Local 14856; Pratt grievance, supplementary award, April 3, 1979. Abbott — 7 pages. (49)*

Timeliness — employee benefits grievance: date cause of action arose, reasonableness of limitations and prejudice to employer considered; *Labour Relations Act* s. 37(5a) applied; grievance arbitrable. *Re Extencicare Limited and Service Employees Union, Local 183. See (11), supra. (50)*

Holiday Pay

Entitlement — collective agreement providing that employees must be employed for 30 days immediately preceeding holiday to be entitled to pay: how entitlement is affected by lay-off during that 30 day period; grievance dismissed. *Re Greening Donald Company Limited and United Steelworkers of America, Local 6266; policy grievance, April 24, 1979. Majority: O'Shea, Byers — 13 pages; did not concur: Pudge. (51)*

Entitlement — grievor scheduled to work on paid holiday, but unable to work because of sickness: grievor was paid sick pay, also claims holiday pay; grievance allowed. *Re Sudbury General Hospital of the Immaculate Heart of Mary and Nurses' Association, Sudbury General Hospital, Local 13, Ontario Nurses' Association; Moxan grievance, April 10, 1979. Brunner, Switzman, Sanderson — 7 pages; addendum: Sanderson — 1 page. (52)*

Entitlement — grievor worked part of shift on qualifying day following holiday: received permission to be absent from work; grievance allowed. *Re Motor Wheel Corporation of Canada Limited and United Automobile Workers, Local 127; Bellehumeur grievance, March 22, 1979. Rayner — 6 pages. (53)*

Entitlement — grievors absent without leave on qualifying day following a holiday: qualifying day interpreted as working day; grievances dismissed. *Re Barton Tubes Limited and United Steelworkers of America; McClenahan, Doreen, Burgess grievances, April 17, 1979. Majority: Weatherill, von Veh — 9 pages; dissent: Stetson — 2 pages. (54)*

Entitlement — part-time employees claim entitlement to holiday pay for holidays not worked: proper characterization of holiday pay; whether indemnity or earned benefit; grievance allowed. *Re City of Sarnia, Corporation of, Marshall Gowland Manor and London and District Service Workers' Union, Local 220; policy grievance, April 18, 1979. Majority: Brent, Mayne — 8 pages; dissent: Furlong — 4 pages. (55)*

Grievor's work schedule re-arranged: whether qualifying days worked; grievance dismissed. *Re Falconbridge Nickel Mines Limited and Sudbury Mine, Mill and Smelter Workers Union, Local 598; St. Amand grievance, April 11, 1979. Brunner — 8 pages. (56)*

Hours of Work

Scheduling changed: whether collective agreement requires agreement of union regarding lunch period; grievance allowed. *Re Grand & Toy Limited and Graphic Arts International Union, Local 12-L; union grievance, April 2, 1979. Teplitsky — 8 pages. (57)*

Job Vacancy

Retiring employee's duties reallocated: whether management permitted to eliminate job; grievance dismissed. *Re Toronto Harbour Commission and Canadian Union of Public Employees, Local 186; union grievance, February 27, 1979. Majority: Teplitsky, Sargeant — 8 pages; dissent: Tate — 4 pages. (58)**

Jurisdictional Dispute

New department having employees with different trades and union representation: whether company must appoint supervisor from each trade; grievance dismissed. *Re Ontario Paper Company Limited and United Association of Plumbers and Steamfitters, Local 413; union grievance, March 30, 1979. Brown, Watson, Dinsdale — 14 pages. (59)*

Lay-Off

Bumping rights — whether grievor qualified to perform available jobs: grievance dismissed. *Re Stewart-Warner Corporation of Canada, Limited and United Automobile Workers, Local 1538; Young grievance, March 28, 1979. Simmons — 6 pages. (60)*

Employees bumped into positions in other classifications: whether this constitutes lay-off or whether one must be out of work to be laid-off; grievance allowed. *Re Benson & Hedges (Canada) Limited and Brampton Plant and Bakery, Confectionery and Tobacco Workers International Union, Local 325; policy grievance. April 20, 1979. Majority: Lederman, Tate — 19 pages; dissent: Bernardo. (61)**

Grievor unable to perform part of her job function for health reasons: whether right to bump into another position under these circumstances; grievance dismissed. *Re Somerville Belkin Industries Limited and United Automobile Workers; Cortis grievance, April 27, 1979. Brown — 19 pages. (62)*

Junior employees in higher classifications retained: whether bumping upwards possible; grievance dismissed. *Re Spruce Falls Power and Paper Company Limited and Lumber and Sawmill Workers' Union, Local 2995; Payant and Reasbuck grievances*, April 9, 1979. Majority: O'Shea, Filion — 24 pages; dissent: Wren — 4 pages. (63)

Re-organization of work force — grievor's job eliminated: no evidence of bad faith or discrimination; grievance dismissed. *Re International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, Local 128 and Office and Professional Employees International Union, Local 343; Walker grievance*, April 11, 1979. Teplitsky — 4 pages. (64)

Overtime

Entitlement: whether assigned according to collective agreement; grievance dismissed. *Re Eaton Yale Limited, Forestry and Construction Equipment Division and International Molders and Allied Workers Union, Local 246; Wood grievance*, April 10, 1979. Brunner — 5 pages. (65)

Improper distribution alleged: whether union properly registered objection; grievance allowed in part. *Re Budd Automotive Company of Canada Limited and United Automobile Workers, Local 1451; anonymous grievance*, March 29, 1979. Shime — 11 pages. (66)

Overtime Pay

Calculation — overtime rate applied to "teaching hours": whether including co-ordinating duties; calculations based on a rolling average; grievance dismissed. *Re Ontario Council of Regents for Colleges of Applied Arts and Technology (Fanshawe College) and Ontario Public Service Employees Union; Wilkinson grievance*, March 19, 1979. Majority: Rayner, McGivney — 10 pages; dissent: Cochrane — 4 pages. (67)*

Entitlement — grievors working on statutory holiday and receiving holiday premium: whether also entitled to count those hours for purposes of receiving overtime premium under collective agreement; grievance dismissed. *Re Dominion Textile Ltee (Fiber World Division of Les Industries Dominion Textile Ltee) and Ouvriers Unis des Textiles d'Amérique; group grievance*, April 23, 1979. Majority: Frumkin, Martel — 7 pages; did not concur: Naud. (68)

Probationary Employees

Discharge grievance — whether grievor's probationary period completed: calculation of length of service disputed; grievance arbitrable. *Re Victoria Hospital and London and District Service Workers' Union, Local 220; Bernardi grievance*, April 5, 1979. Interim award. Majority: Roberts, Switzman — 9 pages; dissent: von Veh. (69)

Procedure

Amendment — declaratory order sought: amendment to grievance requested to bring specific issue before the Board; no prejudice to employer as relief was prospective in nature; amendment permitted. *Re Greater Niagara General Hospital and Ontario Nurses' Association*. See (6), *supra*. (70)

Promotion

Job awarded to outside applicant: whether grievor sufficiently qualified; grievance dismissed. *Re ITT Industries of Canada Limited and United Steelworkers of America, Local 6340; Thompson grievance*, April 4, 1979. O'Shea — 12 pages. (71)

Qualifications — leadership and communications skills: whether properly considered; grievance allowed. *Re Douglas Aircraft Company of Canada Limited and United Automobile Workers, Local 673; Piotrowski grievance*, April 4, 1979. Brown — 25 pages. (72)*

Qualifications — written aptitude test — company based its choice of successful applicant for job entirely on aptitude test; propriety of this practice and considerations which should be taken into account; grievance allowed. *Re Inglis Limited and United Steelworkers of America, Local 4487; Vesik grievance*, April 19, 1979. O'Shea — 18 pages. (73)*

Senior employee with sufficient merit and ability to be awarded job: consideration of onus of proof and proper interpretation of "sufficient ability" clause; grievance allowed in part. *Re The Board of Education for the City of Toronto and Canadian Union of Public Employees, Local 134; Scarratt grievance*, October 30, 1978. Lunney — 10 pages; dissent: Furlong — 1 page; Millage — 3 pages. (74)

Trial period — grievor given ten day trial period and found unsatisfactory: whether management's assessment of performance unfair; grievance dismissed. *Re Bundy of Canada Limited and United Automobile Workers, Local 1352; French grievance*, April 27, 1979. Brown — 18 pages. (75)

Rectification

Agreement accidentally left uncorrected after amendment agreed to: whether rectification possible; grievance allowed. *Re University of Windsor and Canadian Union of Operating Engineers, Local 100; Olsen grievance*, April 9, 1979. Brent, Robinet, Burnell — 7 pages; addendum: Robinet — 1 page; addendum: Brent — 1 page. (76)*

Reporting Pay

Whether collective agreement guarantees minimum four hours pay to part-time employees who report for regular shift even when scheduled shift is only three hours; grievance allowed. *Re Beaver Foods Limited and Hotels, Clubs, Restaurants, Taverns Employees Union, Local 261; union grievance*, April 23, 1979. Curtis — 8 pages. (77)

Sick Pay

Entitlement — grievor discharged for absenteeism: effective date of discharge in issue; grievance allowed. *Re Herb Fraser & Associates Limited and United Steelworkers of America, Local 7022*. See (18), *supra*. (78)

Union Dues

Deduction and remission of union dues — local under trusteeship: ownership of fund disputed in judicial proceedings brought by intervenent; grievance process stayed. *Re Dupont of Canada Limited, Maitland Works and International Chemical Workers' Union, Local 536; union grievance*, April 11, 1979. Kennedy, Herman, Binning — 5 pages. (79)

Vacations

Entitlement — benefits calculated on first day of calendar year: new agreement took effect in the middle of year; retroactive effect of provisions; grievance dismissed. *Re University of Ottawa and Association of Professors of the University of Ottawa; policy grievance*, April 16, 1979. Weatherill — 12 pages. (80)*

Entitlement — vacation credits earned at 1¼ days per month: whether vacation may be taken in advance; grievances dismissed. *Re Crown Assets Disposal Corporation and Public Service Alliance of Canada; Sunstrum, Whittall and Fitz-Patrick grievances*, April 2, 1979. Majority: Scott, Kelley — 3 pages; dissent: Henry — 5 pages. (81)

Scheduling — efficient operation of the department: whether alternative methods of replacing grievor properly considered; grievance allowed. *Re The Canadian Salt Company Limited and United Automobile Workers, Local 240; grievance No. 61*; August 24, 1978. Gorsky — 9 pages. (82)

Wages

Rate of pay: grievor given ambiguous instructions; supervisor intended grievor to perform work in certain classification; grievor performed work in higher classification; grievance allowed. *Re Falconbridge Nickel Mines Limited and Sudbury Mine, Mill and Smelter Workers' Union, Local 598; Constantino grievance*, April 27, 1979. M.G. Picher, Robbins, Churchill-Smith — 7 pages. (83)

Welfare Plans

Collective agreement provides for continuation of present practice regarding benefits: effect of company notice that it may be unwilling to absorb additional premium increases; grievance allowed. *Re Computing Devices Company and Salaried Employees Alliance of Canada; policy grievance, Klein grievance*, April 4, 1979. Majority: Weatherill, Posen — 10 pages; dissent: Barrett — 3 pages. (84)

Employees terminated and re-hired: whether employer obliged to pay O.H.I.P. premiums for this period; grievance dismissed. *Re Metropolitan Toronto, Municipality of and Canadian Union of Public Employees, Metropolitan Toronto Civic Employees Union*. See (3), *supra*. (85)*

Supplemental Unemployment Benefit Plan — plant shut-down for vacation entitlement not a qualifying lay-off under the Plan; interpretation of agreement dependent upon approved registration of Plan under the *Income Tax Act (Canada)*; grievance dismissed. *Re Douglas Aircraft Company of Canada Limited and United Automobile Workers of America, Locals 673 and 1967; policy grievance*, April 17, 1979. Gorsky — 10 pages. (86)

Work Assignment

Teacher workload guidelines — maximum class size limits subject to legitimate time-table considerations, course option factors and teacher specialization; grievance dismissed. *Re Niagara South Board of Education and L'Association des Enseignants Franco-Ontariens; union grievance*, April 18, 1979. Majority: Burkett, Meritt — 13 pages; concurring opinion: Forster — 1 page. (87)

The following awards in interest arbitration under *The Hospital Labour Disputes Arbitration Act* were also filed with the Commission during the month of April, 1979.

Groves Park Lodge and Canadian Union of Public Employees, Local 2103, Fraser — 59 pages; partial dissent: Feeney — 2 pages; partial dissent: Switzman — 1 page.

The Corporation of the County of Middlesex (Strathmere Lodge of Strathroy, Ontario) and London and District Service Workers' Union, Local 220, McCulloch, Walsh — 17 pages; dissent: Hockin — 17 pages.

Toronto East General and Orthopaedic Hospital Inc. and Wellesley Hospital and Sunnybrook Hospital and Baycrest Hospital and/or Jewish Home for the Aged and Service Employees Union, Local 204, and Sunnybrook Hospital Employees Association, Local 777, Samuels, Wright — 22 pages; dissent: Acton — 6 pages.

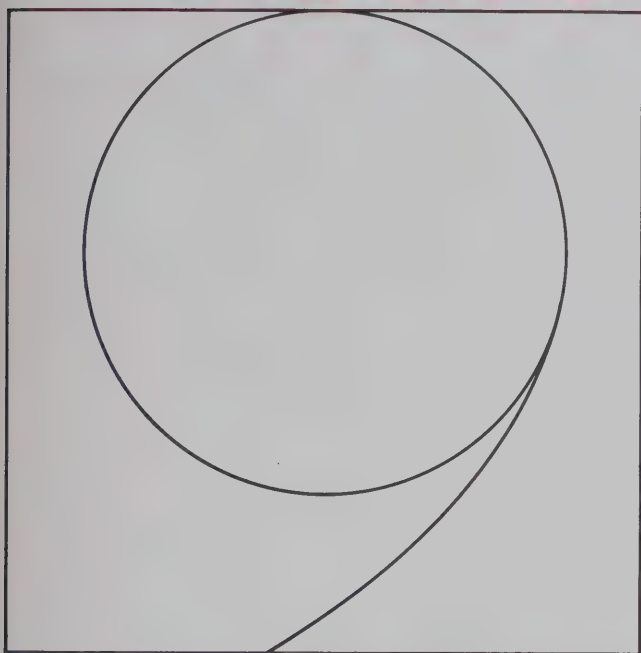
VS Services Ltd., at its unit located at the Salvation Army Grace Hospital and Service Employees Union, Local 204, Brent, Simon — 6 pages; dissent: Clark — 2 pages.

Filing Awards

The attention of chairmen of boards of arbitration and sole arbitrators is drawn to the provision of Section 6(2) of the Regulation, which reads: 6.—(2) Every arbitrator shall, within ten days of issuing an award, file a copy thereof with the Commission. This provision would apply to all arbitrators approved under The Ontario Labour-Management Arbitration Commission Act and regardless of whether they were appointed as chairmen or sole arbitrators pursuant to the Act, by the parties or by the Minister.

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Monthly Bulletin



The Ontario Labour-Management
Arbitration Commission

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Arbitrator

Professor K.P. Swan, who is on sabbatical, will not be available for arbitrations until July 1, 1980.

Awards

The following awards were filed with the Commission during the month of May, 1979, under Section 6(2) of Ontario Regulation 635, R.R.O. 1970.

The summary was prepared at the Faculty of Law, Queen's University, under the supervision of C.G. Simmons, B.A., B.C.L., LL.M., and D.D. Carter, B.A., B.C.L., LL.B.

* Indicates award to be reported in full or in part in *Labour Arbitration Cases*.

Arbitrability

Discharge grievance of non-union employee: prerequisite of employment for 12 month period under *Canada Labour Code Part III*; "continuous employment" not interrupted by innocent absences; preliminary objection over-ruled. *Re International Carriers Limited, Windsor; Fink grievance*, April 26, 1979. Ianni — 17 pages. (1)

Suspension imposed — collective agreement containing no references to discipline other than discharge; grievance arbitrable. *Re Ottawa Citizen and Ottawa Newspaper Guild, Local 205; Fitzrandolph grievance*, May 19, 1979. Majority: Kennedy, Rupert — 18 pages; dissent: Dinsdale — 7 pages. (2)*

Bereavement Leave

Bereavement occurring during grievor's holiday: whether grievor entitled to leave provided by collective agreement; grievance dismissed. *Re Sudbury, The Regional Municipality of and Canadian Union of Public Employees, Local 6; Blake grievance*, May 18, 1979. Majority: Hinnegan, Noble — 8 pages; dissent: McVey. (3)*

Classification

Establishment of rate — onus of proof: whether arbitration analogous to interest arbitration; grievance dismissed. *Re The Board of Governors of Kingston General Hospital and Canadian Union of Public Employees, Local 1974; union grievance*, May 15, 1979. Majority: Simmons, Bentley — 8 pages; dissent: Dumbleton — 1 page. (4)

Job description — two classifications combined in new collective agreement; proper job description in issue; grievance allowed. *Re GSW Appliances, Division of Canadian Appliance Manufacturing Company Limited and United Steelworkers of America, Local 3129; union grievance*, May 28, 1979. O'Shea — 32 pages. (5)

Job evaluation — settlement of disputed evaluation by arbitration; grievance dismissed. *Re City of St. Catharines, Corporation of and Canadian Union of Public Employees, Local 157; union grievance*, April 28, 1979. Majority: McLaren, Craig — 17 pages; dissent: Richardson — 5 pages; addenda: — 6 pages. (6)

Regular status — substantial compliance with prerequisites to higher classification: agreement between parties required; grievance dismissed. *Re Brockville General Hospital and Nurses Association of Brockville General Hospital, Ontario Nurses' Association, Local 98; Moore grievance*, April 16, 1979. Majority: Scott, Harnden — 5 pages; dissent: Butler — 1 page. (7)

Temporary upgrading — minimum period of work required: alleged material change in job duties; grievance dismissed. *Re Canadian Broadcasting Corporation and National Association of Broadcast Employees and Technicians; Dixon grievance*, April 10, 1979. Adams — 16 pages. (8)

Work assignment — employees allegedly performing work of a higher wage classification: degree of responsibility and supervision in issue; grievance dismissed. *Re Municipality of Metropolitan Toronto and Canadian Union of Public Employees, Metropolitan Toronto Civic Employees Union, Local 43; policy grievance*, April 12, 1979. Majority: Adams, Perron — 17 pages; dissent: Tate — 3 pages. (9)

Collective Agreement

Letter of intent — incorporation of sick leave plan in the collective agreement: alleged intention to include it in the collective agreement; preliminary objection dismissed; grievance allowed. *Re Ontario Council of Regents for Colleges of Applied Arts and Technology (St. Clair College) and Ontario Public Service Employees' Union; Pflanzner grievance*, May 23, 1979. Majority: Rayner, Robbins — 9 pages; dissent: Wright — 6 pages. (10)

Memorandum of settlement — agreement providing for incorporation of matters previously agreed upon: whether earlier unratified Memorandum of Settlement has any effect; grievance dismissed. *Re Storwal International Inc. and United Steelworkers of America, Local 3257; policy grievance*, May 10, 1979. Majority: O'Shea, O'Byrne — 12 pages; dissent: Taylor. (11)

Contracting Out

Temporary new work — grievor capable of performing work: situation not excluded by collective agreement; grievance dismissed. *Re Rockwell International of Canada Limited and United Automobile Workers, Local 35; Cudmore grievance*, May 17, 1979. Brown — 13 pages. (12)

Cost of Living Allowance

Calculation — quarterly review of COLA based on published indices; issue of appropriate use of monthly indices; grievance dismissed. *Re International Malleable Iron Company Limited and United Steelworkers of America, Local 3000; union grievance*, May 7, 1979. O'Shea — 9 pages. (13)

Damages

Grievor reinstated by prior award — parties unable to agree on quantum of compensation: agreement reached after request for further hearing; compensation awarded in accordance with settlement. *Re Barber Hydraulic Turbine Limited and United Steelworkers of America; Allan grievance*, Majority: O'Shea, Moreau — 4 pages; did not concur: Curry. (14)

Quantum — calculated from date of reference to arbitration: alleged ambiguity in subsequent award; Board retained jurisdiction; application dismissed. *Re Domtar Packaging Limited and Canadian Paperworkers Union, Local 1470; Willman grievance*, May 4, 1979. O'Shea, Quaife, Healy — 7 pages. (15)

Demotion

Disciplinary demotion — wilful neglect of responsibilities: alleged review of a conditional posting: grievor had completed probationary period; grievance allowed in part. *Re Air Canada and Canadian Air Line Flight Attendants Association; Kendall grievance*, April 23, 1979. Adams — 20 pages. (16)*

Incompetence — grievor's work performance inadequate: internal and external inspection of grievor's work; just cause alleged; grievance dismissed. *Re Queen's University at Kingston, Ontario and Kingston Heating and Maintenance Workers' Union, Local 229; Walker grievance*, May 29, 1979. Hinnegan, Harrington, Cook — 7 pages. (17)

Discharge

Absenteeism due to alcoholism — company not notified of absence: conditionally re-instated without compensation. *Re American Motors (Canada) Limited and United Automobile Workers; Schneider grievance*, April 27, 1979. Teplitsky — 7 pages. (18)*

Absenteeism — excessive innocent absenteeism: alleged incapacity of regular attendance in the future; failure to give adequate notice of past absences; grievance dismissed. *Re Canadian Lukens Limited and United Steelworkers of America; Stewart grievance*, May 29, 1979. Burkett — 12 pages. (19)

Absenteeism — grievor took one week vacation without proper authority: alleged permission from ostensible authority; reinstatement with full compensation. *Re International Carriers Limited*. See (1), *supra*. (20)

Allegation of marijuana use at work: denial by grievor; grievance dismissed. *Re National Auto Radiator Manufacturing Company Limited and United Automobile Workers; Shoulders grievance*, May 15, 1979. Rayner — 10 pages. (21)

Assault — grievor physically assaulted another employee: provocation alleged; mitigating factors in assessing penalty; suspension substituted with conditional re-instatement. *Re Borough of Etobicoke and Etobicoke Professional Fire Fighters' Association, Local 1137; Geller grievance*, May 10, 1979. Shime — 24 pages. (22)

Assault on foreman: evidence of antagonism between grievor and foreman; whether lesser penalty warranted; grievance dismissed. *Re Spruce Falls Power and Paper Co. Ltd. and Lumber and Sawmill Workers Union, Local 2995; Larocheville grievance*, May 4, 1979. Majority: Brunner, Gray — 17 pages; dissent: Wren — 5 pages. (23)*

Company rules — breach of rule prohibiting possession or use of alcohol or drugs: grievor found smoking marijuana; grievance dismissed. *Re National Auto Radiator Manufacturing Company Limited and United Automobile Workers, Local 195; Green grievance*, May 25, 1979. Brandt — 18 pages. (24)

Criminal conduct — grievor indecently exposed himself to a customer of the employer: evidence of similar past acts; grievance dismissed. *Re Loblaw's Limited and Retail Clerks Union, Local 206; anonymous grievance*, May 28, 1979. Rose, McDermott, Strickland — 11 pages. (25)

Culminating incident — grievor had record of absenteeism and alleged negligence in performance of his duties: no prior disciplinary action taken; negligence not shown; grievance allowed. *Re Cochrane-Dunlop Limited and Teamsters Union, Local 419; Mills grievance*, May 29, 1979. Majority: O'Shea, Bodkin — 14 pages; dissent: Gilfillan. (26)

Failure to obey instructions of supervisor: what aspects of grievor's past record should be considered; suspension substituted. *Re Victoria Hospital Corporation and London and District Service Workers' Union, Local 220; Hines grievance*, April 30, 1979. Brent, Switzman — 22 pages; addendum: Switzman — 1 page; dissent: Schmidt — 2 pages. (27)

Grievor allegedly counselling illegal strike: no evidence of such action; grievance allowed. *Re Namasco Limited and United Automobile Workers, Local 195; Desjardins grievances*, May 22, 1979. Koskie — 17 pages. (28)

Grievor placing bets on our behalf, contrary to Federal Regulation, and interfering with recording equipment: employer not taking action against similar conduct by others; suspension substituted. *Re The Ontario Jockey Club and Mutuel Employees' Association, Local 528, Service Employees' International Union; Dunbar grievance*, December 14, 1976. Majority: Brunner, Tate — 12 pages; dissent: Drmaj — 6 pages. (29)

Incompetence alleged: grievor often seeking assistance of fellow employees, and repeating work; grievance allowed. *Re The Mississauga Hospital and Ontario Public Service Employees' Union; Despa grievance*, May 3, 1979. Majority: Burkett, Trower — 14 pages; dissent: Filion — 2 pages. (30)

Inspector's report indicating careless driving, overlong work breaks and theft of company's product: credibility of grievor and inspector in issue; grievance dismissed. *Re Levy's Bread and Milk and Bread Drivers, Dairy Employees, Caterers and Allied Workers, Local 647; Perez grievance*, April 18, 1979. Majority: Palmer, Stringer — 22 pages; dissent: Tait. (31)

Insubordination — grievor refused instructions with respect to work improvement; grievor refused work re-assignment; past record and culminating incident alleged; grievance dismissed. *Re Shoppers Meat Market Limited (Metro Provisions) and Canadian Food and Allied Workers Union, Local 633; Trolley grievance*, May 25, 1979. Majority: Kennedy, Lewis, Sargeant — 15 pages; addendum: Lewis — 2 pages. (32)

Intoxication — grievor's record of alcoholism and absenteeism: culminating incident; grievance dismissed. *Re City of Toronto and Toronto Civic Employees Union, Local 43; McGregor grievance*, May 14, 1979. Majority: Kates, Paulin — 13 pages; dissent: Tate — 4 pages. (33)

Negligence — grievor careless in use of company lift-truck: review of disciplinary record; suspension substituted. *Re Dexter-Lawson Products Limited and United Steelworkers of America, Local 2890; Lacourciere grievance*, May 28, 1979. Brown — 9 pages. (34)

Negligence — grievor damaged company property: contributory negligence of employer; past practice and grievor's past record considered; suspension substituted. *Re MCL Motor Carriers Limited and Teamsters Union, Local 938; Trafford grievance*, May 14, 1979. Brown, Kobryn, McLelland — 27 pages. (35)

Negligence — grievor involved in highway traffic accident while employed: sufficiency of evidence; grievor's record considered; grievance allowed. *Re Smith Transport Company Limited and Teamsters Union, Local 938; Theriault grievance*, April 25, 1979. Majority: Brunner, Tait — 13 pages; dissent: Singleton — 1 page. (36)

Negligence — performance of duties: grievor judged a safety risk to employer's patients; past record considered; alternative of a non-nursing capacity suggested; reinstatement without compensation. *Re St. Joseph's Hospital (Chatham) and Service Employees' Union, Local 210; O'Rourke grievance*, May 1, 1979. Majority: R.J. Roberts, McConville — 9 pages; dissent: Farrar. (37)

Negligence — performance of duties: pattern of carelessness; past record considered; suspension substituted. *Re Metropolitan Stores of Canada Limited and Retail, Wholesale and Department Store Union; Stevens grievance*, May 1, 1979. O'Shea, Farrell, Churchill-Smith — 12 pages. (38)

Substitution of penalty — just and equitable rule: events subsequent to discharge considered; grievor assaulted foreman; grievance dismissed. *Re National Auto Radiator Manufacturing Company Limited and United Automobile Workers*, Local 195. See (24), *supra*. (39)

Tardiness — culminating incident alleged: whether explanation to be considered; grievance allowed. *Re Crothers Limited and United Automobile Workers; Dinardo grievance*, May 9, 1979. Majority: O'Shea, Cooper — 13 pages; dissent: Morley — 2 pages. (40)

Termination — physical unfitness: medical opinions in issue; reinstatement without compensation. *Re Rudolph McChesney Lumber Company Limited and United Brotherhood of Carpenters and Joiners of America, Local 2995; Richard grievance*, May 3, 1979. Majority: Brunner, Wren, Noonan — 12 pages; addendum: Wren — 1 page; addendum: Noonan — 2 pages. (41)

Theft — grievor alleged to have participated in theft by another employee: sufficiency of evidence; suspension substituted. *Re Coca-Cola Limited and Soft Drink Workers Joint Local Executive Board; Harkness grievance*, May 12, 1979. Curtis — 12 pages. (42)

Discipline

Absence without leave — whether leave of absence for union business properly requested: grievance allowed. *Re Ferranti-Packard Limited and United Steelworkers of America, Local 5788; Duffy grievance*, April 25, 1979. McLaren, Sharp, Mitchnick — 11 pages; addendum: Mitchnick — 2 pages. (43)

Absenteeism — leave of absence requested but not granted: whether grievor's reasons adequate; grievance dismissed. *Re Victoria Hospital and London and District Service Workers' Union*. See (27) *supra*. (44)

Carelessness — accident involving crane causing \$26,000 damage: discipline allegedly excessive and inconsistent; grievance dismissed. *Re Steel Company of Canada, Limited, Hilton Works and United Steelworkers of America, Local 1005; Jones grievance*, May 4, 1979. Majority: McLaren, Dinsmore — 14 pages; dissent: Chertkoff — 3 pages. (45)

Carelessness — grievor involved in traffic accident while driving bus: penalty comparable to others imposed in similar circumstances; grievance dismissed. *Re Town of Oakville, The Corporation of and Canadian Union of Public Employees, Local 1994; Jensen grievance*, May 18, 1979. Majority: Brent, Roberts — 10 pages; dissent: Greenaway — 3 pages. (46)

Customer relations — grievor suspended after an argument with a customer: grievor allegedly at fault; credibility of grievor and customer as witnesses; warning substituted. *Re Dominion Stores Limited and Retail, Wholesale and Department Store Union, Local 414; Blanchard grievance*, May 23, 1979. Majority: Rayner, Dahmer — 11 pages; dissent: White — 2 pages. (47)

Grievor becoming ill and receiving disability payments during period of suspension: whether suspension may be served during period of illness; setoff claimed; grievance allowed. *Re Outboard Marine Corporation of Canada Limited and United Steelworkers of America, Local 5009; Jones grievance*, May 16, 1979. Palmer — 6 pages. (48)*

Grievor suspended pending determination of criminal charges relating to employment — later discharged: grievor misleading union representatives; grievance dismissed. *Re Palm Dairies Limited and Retail, Wholesale and Department Store Union, Local 579; Meandro grievance*, April 20, 1979. Lunney Lachance, Bouchard — 3 pages. (49)

Insubordination: abusive conduct to supervisor: grievor's evidence not credible; grievance dismissed. *Re Namasco Limited and United Automobile Workers*. See (28) *supra*. (50)

Insubordination — refusal to carry out instructions: onus on employer to show clear refusal; grievance allowed. *Re Canadian Rock Salt Company Limited and United Automobile Workers, Local 195; Aliu grievance*, May 3, 1979. Barton — 10 pages. (51)

Leaving work early — illness: whether grievor reported to supervisor prior to leaving, as required; lesser penalty substituted. *Re Cannet Freights Cartage Limited and Teamsters, Local 419; Green grievance*, May 18, 1979. Brown — 16 pages. (52)

Leaving work early: reasonableness of penalty in issue; past record considered; grievance dismissed. *Re Steel Company of Canada Limited, Hilton Works and United Steelworkers of America, Local 1005; Shaw grievance*, May 29, 1979. Brent, O'Neil, Baker — 8 pages. (53)

Refusal to perform task: union previously having indicated its belief, based on prior award, that task not within job requirements; exception to "work now, grieve later" rule alleged; lesser penalty substituted. *Re Borough of Scarborough, The Corporation of and Scarborough Professional Fire Fighters Association; Head grievance*, May 24, 1979. Beatty — 12 pages. (54)

Reporter refusing to interview doctors charged with fraud: publication of story potentially constituting contempt or breach of non-publication order; grievance allowed. *Re Ottawa Citizen and Ottawa Newspaper Guild*. See (2) *supra*. (55)*

Sleeping on the job: breach of provisions of collective agreement; grievance dismissed. *Re Budd Automotive Company of Canada Limited and United Automobile Workers, Local 1541; Kocsis grievance*, April 30, 1979. Gorsky — 6 pages. (56)

Work performance — grievor failed to carry out his duties properly: penalty in issue; grievance dismissed. *Re Woodstock General Hospital Trust and London and District Service Workers Union, Local 220; Mizon grievance*, May 28, 1979. Majority: Brown, Sanderson — 9 pages; dissent: Switzman — 2 pages. (57)

Grievance Procedure

Chairman not named within required period: "inordinate and inexcusable delay" in prosecuting grievance; whether prejudice to company resulting; grievance arbitrable. *Re Livingston Industries Limited and International Woodworkers of America; Wolfe grievance*, April 24, 1979. Majority: Brunner, Smiley — 10 pages; partial dissent: Clawson — 1 page. (58)

Representation by legal counsel — arbitrator's discretion to exclude counsel; common law and statutory right to counsel; context of labour arbitration process; preliminary ruling and direction. *Re Men's Clothing Manufacturers Association of Ontario and Toronto Joint Board Amalgamated Clothing and Textile Workers' Union; anonymous grievance*, May 15, 1979. Arthurs — 22 pages. (59)*

Timeliness — whether limits in collective agreement mandatory or directory: agreement providing for extension of time; grievance arbitrable. *Re Air Canada and International Association of Machinists and Aerospace Workers; unnamed grievor*, May 22, 1979. Shime — 19 pages. (60)*

Health Insurance Plans

Physicians' reports — employees required to substantiate claims through medical evidence: reporting fees the responsibility of employees; grievance dismissed. *Re International Harvester Company of Canada Limited and United Steelworkers of America, Local 2868; union grievance*, May 2, 1979. Majority: Kennedy, Stringer — 9 pages; dissent: McMillan. (61)

Job Posting

Reclassification — two classifications merged into one to rationalize employer's progression system: only one classification should be subject of job posting; grievance dismissed. *Re Union Gas Limited and Oil, Chemical and Atomic Workers International Union, Local 9-999; union grievance*, May 28, 1979. Majority: Brown, Morley — 18 pages; dissent: Stewart. (62)

Lay-Off

Bumping rights — employer entitled to consider seniority, experience and reliability: seniority to govern only when other factors equal; grievance dismissed. *Re Rema Tip Top Rubber Company and United Steelworkers of America, Local 6363; Boucher grievance*, April 20, 1979. Majority: Brunner, Buckland — 8 pages; dissent: Edey — 2 pages. (63)

Collective agreement requiring consultation between union and company re lay-offs — non-compliance alleged: grievances allowed. *Re Mr. Sabre of Canada Limited and Toronto Joint Board Amalgamated Clothing and Textile Workers Union; Orsino and Marsilo grievances*, May 15, 1979. Arthurs — 3 pages. (64)

Qualifications — whether grievors able to perform jobs done by less senior employees: whether grievors required to accept unfamiliar alternate jobs; grievances allowed. *Re Benn Iron Foundry Limited and United Automobile Workers; Fulon, Costello and Kooistra grievances*, May 14, 1979. Rayner — 10 pages. (65)

Leave of Absence

Grievor placed on leave of absence by company during her pregnancy: whether grievor able to perform her work or entitled to other work; grievance dismissed. *Re Rubbermaid (Canada) Limited and United Automobile Workers, Local 252; Barbir grievance*, May 9, 1979. Rayner — 9 pages. (66)

Management Rights

Automation resulting in reduction of overtime shifts — compensation claimed: whether collective agreement permits unilateral change; grievances allowed. *Re Cities Heating Company Limited and Canadian Union of Operating Engineers, Local 105; Guild and Chaiisson grievances*, April, 30, 1979. Brandt — 8 pages. (67)

Overtime Pay

Calculation — employer bound by terms of collective agreement: past practice irrelevant; grievance dismissed. *Re Dominion Textile Limited and United Textile Workers, Local 469; Jackson grievance*, May 12, 1979. Majority: Curtis, Mills — 6 pages; did not concur: Bouchard. (68)

Entitlement — grievor temporarily assigned to classification with rotating overtime entitlement: past practice considered; grievance dismissed. *Re Dominion Textile Limited and United Textile Workers, Local 469; Tyo grievance*, May 12, 1979. Majority: Curtis, Mills — 8 pages; did not concur: Bouchard. (69)

Entitlement — portion of shift scheduled on a holiday: interpretation of qualifying day as calendar day; grievances allowed. *Re George Brown College and Ontario Public Service Employees Union; Walters, et al grievances*, May 4, 1979. Majority: Weatherill, Cochrane — 10 pages; dissent: Hubert — 2 pages. (70)*

Premium Pay

Scheduling of work — continuous operations: summer schedule reduced to six day operation; individual scheduling reduced to five day work week; alleged entitlement to premium pay for work days scheduled on weekends; grievance allowed. *Re Continental Group of Canada Limited and Canadian Union of Operating Engineers and General Workers, Local 101; union grievance*, May 25, 1979. Majority: Weatherill, Lang — 10 pages; dissent: Storie — 4 pages. (71)

Statutory holiday falling on Saturday — grievors receiving holiday pay plus overtime pay; whether also entitled to weekend premium; grievance allowed. *Re Associated Freezers of Canada Limited and Teamsters Union, Local 419; Hemmercts et al grievances*, May 24, 1979. Burkett — 11 pages. (72)*

Privacy

Electronic surveillance of employees — T.V. cameras and monitors installed to deter theft of company property: alleged psychological impact on employees; survey of arbitral jurisprudence; grievance allowed in part. *Re Puretex Knitting Company Limited and Canadian Textile and Chemical Union; policy grievance*, May 29, 1979. Ellis — 33 pages. (73)*

Probationary Employees

Severance pay — entitlement to notice while on probation: inference of specific exclusion from general seniority clauses; grievance dismissed. *Re The Ottawa Citizen and Ottawa Newspaper Guild, Local 205; Barry grievance*, May 10, 1979. Majority: Shime, Dinsdale — 10 pages; dissent: Rupert — 2 pages. (74)

Progression

Entitlement — seniority and ability: grievor could not perform extra duties of higher classification; alleged automatic advancement based solely on seniority; grievance dismissed. *Re Consumers Glass Company Limited and United Glass and Ceramic Workers of North America, Local 200; Micallef grievance*, May 30, 1979. O'Shea, Wright, Agostinelli — 13 pages. (75)

Promotion

Qualifications — ability to perform job: alleged inability of grievor; grievance dismissed. *Re Fleet Industries, Division of Ronyx Corporation Limited and International Association of Machinists and Aerospace Workers, Local 171; Bukator grievance*, March 31, 1979. O'Connor, Marchand, Wren — 9 pages. (76)

Qualifications — employer rejected all candidates: higher standard placed on classification due to customer demands; alleged breach of seniority rights in job posting provisions; grievance dismissed. *Re Dominion Chain Company, Division of Welland Forge Limited and International Association of Machinists and Aerospace Workers, Local 1927; group grievance*, May 29, 1979. Majority: O'Shea, Macdermid — 12 pages; dissent: Jardine. (77)

Qualifications — experience: whether candidates equal in skill and ability: improper emphasis on experience alleged; grievance dismissed. *Re Canada Wire and Cable Limited and International Brotherhood of Electrical Workers, Local 2345; Watts grievance*, April 24, 1979. Majority: Gorsky, Longpre — 13 pages; dissent: Wolansky — 4 pages. (78)

Qualifications — grievor rejected as only candidate for job posting: apprentice from outside bargaining unit hired; whether entitled to ten day trial period; alleged seniority rights in job postings; grievance allowed. *Re FMC of Canada Limited, Cable Crane and Excavator Division and United Automobile Workers, Local 636; Clark grievance*, May 22, 1979. Majority: O'Shea, Blackburn — 17 pages; dissent: Gilfillan — 7 pages. (79)

Qualifications — whether grievor adequately qualified: evidence of past errors presented; grievance allowed. *Re General Motors of Canada Limited and Canadian Union of Operating Engineers, Local 103; Gault grievance*, March 22, 1979. Palmer — 20 pages. (80)

Recall

Seniority — junior employee recalled before grievor: grievor previously re-classified because of partial disability; alleged ability to perform job; grievance dismissed. *Re Westinghouse Canada Limited and United Electrical, Radio and Machine Workers of America, Local 504; McLaren grievance*, April 30, 1979. Majority: Brown, Kacur — 17 pages; dissent: Greenwood. (81)

Reporting Pay

Entitlement — minimum pay if employee sent home early without prior notice: exception for breakage of major equipment; grievance dismissed. *Re Mansfield-Denman General Company Limited and United Rubber, Cork, Linoleum and Plastic Workers of America, Local 455; Noyes grievance*, April 25, 1979. Majority: O'Shea, Gorchinsky — 10 pages; dissent: Bruder. (82)

Grievors reporting on holiday as requested, but finding plant locked: whether adequate attempts to gain entry made; grievance allowed. *Re Stanley Structures Limited and United Cement, Lime and Gypsum Workers International Union, Local 424, AFL-CIO/CLC; Beumer, Hogan and Walmsley grievances*, May 10, 1979. Majority: Palmer, Nokes — 7 pages; dissent: Winkler. (83)

Retroactivity

Wages — date at which increases given effect: compliance with terms of collective agreement; grievances dismissed. *Re Brampton Hydro-Electric Commission and International Brotherhood of Electrical Workers, Local 636; Durham et al grievances*, May 8, 1979. O'Shea — 18 pages. (84)

Scheduling of Work

Location of work — annual choice of preferred work site subject to management rights over organization of work force: grievor requested a split shift alternating between two sites; grievance dismissed. *Re City of Windsor, Corporation of and Windsor Municipal Employees, Local 82; Caza grievance*, April 23, 1979. Brunner, Perrin, Rivait — 8 pages. (85)

Shift schedules — employees permitted to choose starting point in rotation of tours: whether entitled to choose hours within each tour; grievance dismissed. *Re Bell Canada and Communications Union Canada; Vernon grievance*, May 29, 1979. Majority: Beatty, Hersey — 10 pages; dissent: Walsh — 6 pages. (86)

Seniority

Seniority date — seniority credited for total period of employment with company: grievor promoted out of and demoted back into bargaining unit; alleged termination of prior seniority rights; grievance dismissed. *Re Riverside Yarns Limited and Amalgamated Clothing and Textile Workers Union, Local 2281; union grievance*, May 9, 1979. Majority: Adams, Binning — 14 pages; dissent: Hainsworth — 1 page. (87)*

Sick Leave

Eligibility — onus on grievor to establish sickness or injury: grievor suspended for alleged abuse of sick leave; bona fide belief in her inability to work due to fatigue; grievance allowed. *Re Air Canada and Canadian Air Lines Flight Attendants Association; Walker grievance*, March 20, 1979. Adams — 21 pages. (88)

Illness — grievor suffered from "walking pneumonia": required to rest but not stay at home; alleged misrepresentation of illness; grievance allowed. *Re Ontario Council of Regents for Colleges of Applied Arts and Technology (St. Clair College) and Ontario Public Service Employees' Union*. See (10), *supra*. (89)

Sick Pay

Entitlement — plant vacations: past practice under similar previous agreement considered; change in agent for bargaining unit under new agreement; alleged changes in parties' intentions; grievances dismissed. *Re Wallace Barnes Company Limited and United Steelworkers of America, Local 8761; Stipsits, Sheldrake grievances*, May 1, 1979. Majority: O'Shea, Walker — 14 pages; dissent: Greenaway — 2 pages. (90)

Transfer

Grievor transferred to different crew doing same work: whether seniority must be considered in making transfer; grievance dismissed. *Re Dupont of Canada Ltd. (Nipissing Works) and Nipissing Independent Union; Morin grievance*, April 30, 1979. Majority: Beatty, Binning — 7 pages; dissent: Wachski — 2 pages. (91)

Involuntary transfer — alleged medical disability: discrimination alleged; duty to act fairly; grievance allowed. *Re Metropolitan Toronto, Municipality of and Canadian Union of Public Employees, Local 43; Marsh grievance*, June 29, 1976. Majority: Baum — 15 pages; did not concur: Tate; dissent: Sergeant — 11 pages. (92)

Temporary advancement — seniority provisions governing permanent promotions: alleged ambiguity in provisions through past practice; grievance dismissed. *Re Hamilton Street Railway Company and Amalgamated Transit Union, Division 107; Handley grievance*, May 18, 1979. Majority: Johnston, Hamilton — 11 pages; did not concur: Switzman. (93)

Union Rights

Union officers requesting leave to attend demonstration at unrelated company: whether legitimate union business; grievance dismissed. *Re GSW Limited and United Steelworkers of America, Locals 3789 and 6028; policy grievance*, April 25, 1979. Shime — 9 pages. (94)

Union Security

Previous award giving work to union: company following contrary O.L.R.B. decision in closely related case; what remedy appropriate; grievance allowed. *Re Piggott Structures Co. Ltd. and United Brotherhood of Carpenters and Joiners of America, Local 18; union grievance*, May 1, 1979. Shime, Davidson, White — 8 pages. (95)*

Vacation Pay

Calculation — "amount earned": inclusion of vacation pay received in previous year as part of the base; alleged ambiguity; grievance allowed. *Re Byron Jackson Division, Borg-Warner (Canada) Limited and International Association of Machinists and Aerospace Workers, Local 235; policy grievance*, April 12, 1979. Majority: Teplitsky, Tate — 5 pages; dissent: Drmaj — 2 pages. (96)

Whether grievor entitled to pay for full vacation period earned: "latent ambiguity alleged": grievance dismissed. *Re Air Canada and Canadian Air Line Employees' Association; anonymous grievance*, May 18, 1979. Shime — 10 pages. (97)

Vacations

Scheduling — adequate replacement help not available for dates requested: whether grievor may schedule vacation unilaterally; grievance dismissed. *Re Domtar Inc. Domtar Chemicals Group, CDC Division and Canadian Chemical Workers Union, Local 17; McDonnell grievance*, May 1, 1979. Shime, McIlwain, Byers — 7 pages. (98)

Scheduling — employees chose vacation periods subject only to seniority: exclusive management rights alleged; grievances allowed. *Re McCallum Transport Limited and Teamsters Union, Local 938; Harris, Dobbie grievances*, May 7, 1979. Majority: Hinnegan, Doe — 8 pages; dissent: Singleton. (99)

Wages

Calculation — entitlement to senior pay scale: length of service considered; grievance allowed. *Re Brampton Hydro Electric Commission and International Brotherhood of Electrical Workers, Local 636*. See (84), *supra*. (100)

Grievor "red-circled" and receiving only half negotiated increase, prior to A.I.B. — receiving full increase during A.I.B. period: whether grievor to receive full increase after A.I.B. period; grievance dismissed. *Re Mississauga Hydro Electric Commission and International Brotherhood of Electrical Workers; O'Connell grievance*, May 11, 1979. Majority: Rayner, Gregory — 6 pages; dissent: Fisher — 1 page. (101)

Welfare

Health insurance — entitlement: compensable injury or illness: insurance covered disabilities not compensated by government programs; alleged entitlement to both programs; grievance dismissed. *Re Perley Hospital and Ontario Nurses' Association, Local 149; Hodgson grievance*, March 28, 1979. Majority: Roach, Rivet — 11 pages; dissent: Butler — 4 pages. (102)

Work Assignment

Seniority — employees called-in according to seniority: grievor denied assignment without explanation; alleged discipline for absenteeism; grievance allowed. *Re Hoffman Concrete Products Limited and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, Local 230; Ouellette grievance*, May 29, 1979. Majority: P.C. Picher, Thomson — 5 pages; did not concur: Clouthier. (103)

The following awards in interest arbitration under *The Hospital Labour Disputes Arbitration Act* were also filed with the Commission during the month of May, 1979.

Corporation of the County of Kent (Thamesview Lodge) and Service Employees' Union, Local 210, Windsor, Ontario, Brunner, Lewis — 16 pages; dissent: McNaughton — 9 pages.

The Regional Municipality of Sudbury (Pioneer Home for the Aged) and Canadian Union of Public Employees, Local 148, Betcherman, Pharand — 10 pages; partial dissent: Baldwin — 2 pages.

Sydenham District Hospital and Office and Professional Employees International Union, Local 503, Kennedy — 12 pages; partial dissent: McNaughton — 2 pages; partial dissent: More — 2 pages

Westlake Nursing and Convalescent Home and Pharmacists and Professional Employees' Association, Local Union 1976, Potter, Bowden, Mastin — 7 pages.

St. Raphael's Nursing Home Ltd. (Kitchener) and London and District Service Workers' Union, Local 220, Teplitsky, Switzman, Kelly — 5 pages.

The Corporation of the City of Sarnia (Marshall Gowland Manor) and Ontario Nurses' Association, Ord, Walsh — 10 pages; dissent: Drmaj — 3 pages.

The Public General Hospital Society of Chatham and Service Employees' Union, Local 210, Palmer, Filion — 13 pages; dissent: Coburn.

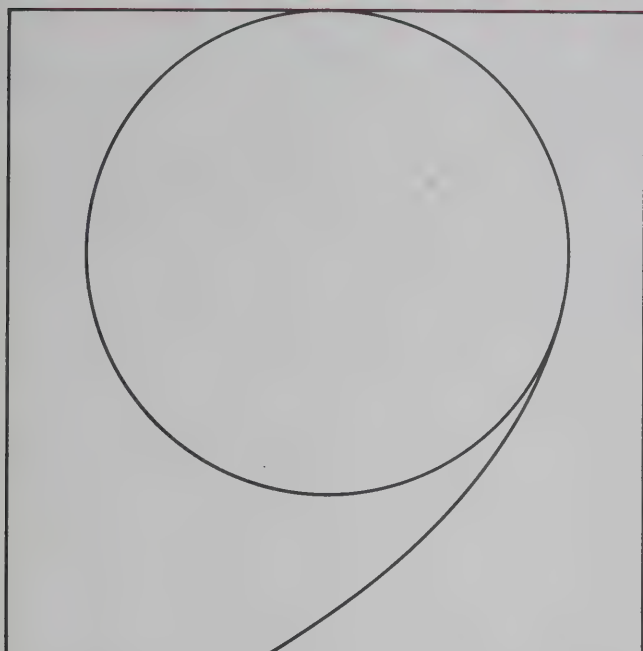
The Regional Municipality of Waterloo (Sunnyside Home) and London and District Service Workers' Union, Local 220, Rayner — 8 pages; partial dissent: Noble — 2 pages; partial dissent: Walsh — 1 page.

Filing Awards

The attention of chairmen of boards of arbitration and sole arbitrators is drawn to the provision of Section 6(2) of the Regulation, which reads: 6.—(2) Every arbitrator shall, within ten days of issuing an award, file a copy thereof with the Commission. This provision would apply to all arbitrators approved under The Ontario Labour-Management Arbitration Commission Act and regardless of whether they were appointed as chairmen or sole arbitrators pursuant to the Act, by the parties or by the Minister.

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Arbitrators

George W. Adams has been appointed Chairman of The Ontario Labour Relations Board, effective September 1, 1979.

Changes of Address and Telephone Number

The following changes should be noted, effective immediately:

Mrs. Louisette Duchesneau-McLachlan, c/o D'Iorio & Duchesneau-McLachlan, 269 Main Street West, Suite 102, North Bay, Ontario, P1B 2T8; telephone (705) 476-4014.

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Professor W.E. McCaughey; telephone (613) 231-2923, or (613) 231-3375.

Awards

The following awards were filed with the Commission during the month of June, 1979, under Section 6(2) of Ontario Regulation 635, R.R.O. 1970.

The summary was prepared at the Faculty of Law, Queen's University, under the supervision of C.G. Simmons, B.A., B.C.L., LL.M., and D.D. Carter, B.A., B.C.L., LL.B.

* Indicates award to be reported in full or in part in *Labour Arbitration Cases*.

Bargaining Unit

Employees of another firm under contract to employer—not part of bargaining unit; grievance dismissed. *Re Rockwell International of Canada Limited and United Automobile Workers, Local 1941; policy grievance*, May 31, 1979. Rayner—8 pages. (1)

New management position created—management having right to reclaim supervisory functions; grievance dismissed. *Re Canadian Broadcasting Corporation and National Association of Broadcast Employees and Technicians; Morin grievance*, June 11, 1979. O'Shea—21 pages. (2)

Work assignment—supervisory personnel performing work of employees within bargaining unit; resulting lay-off of employees; violation of collective agreement alleged; grievance allowed. *Re Canadian National Institute for the Blind and Service Employees Union, Local 204; policy grievance*, June 11, 1979. Majority: Brunner, Simon—10 pages; dissent: Della Penna—3 pages. (3)

Bereavement Leave

Vacation taken to visit seriously ill parents; parents dying during vacation; grievance dismissed. *Re St. Joseph's Hospital and Canadian Union of Public Employees, Local 1144; Keough, Harewood and Innis grievances*, May 30, 1979. Majority: Kates, Paulin—10 pages; dissent: Risely—1 page. (4)

Call-back Pay

Assignment immediately prior to regular shift—not a call-back; grievance dismissed. *Re Eastern Steelcasting Division of Ivaco Ltd. and United Steelworkers of America; Leclerc grievance*, June 14, 1979. Shime—6 pages. (5)

Classification

Effective date of reclassification—grievance allowed in part. *Re Molson's Brewery (Ontario) Limited and International Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers of America, Local 304; Union grievance*, May 31, 1979. Brunner—14 pages. (6)

Lesser skilled employees assigned to work normally done by higher classification—not justified by *Operating Engineers Act*; grievance allowed. *Re Kelsey-Hayes Canada Limited and Canadian Union of Operating Engineers, Local 100; policy grievance*, June 8, 1979. Betcherman—6 pages. (7)

Part of higher-rated job assigned to grievors—effective transfer; grievances allowed. *Re Livingston Industries Limited and International Woodworkers of America; Gubesch et al grievances*, June 14, 1979. Majority: Shime, Smiley—17 pages; dissent: Piroth—4 pages. (8)

Reorganization of duties—no substantial change in job duties; grievance dismissed. *Re Peterborough Civic Hospital and Ontario Nurses' Association; policy grievance*, May 22, 1979. Beck, Dixon, Butler—25 pages. (9)

Collective Agreement

Ratification—employer's actions constituting ratification; grievance allowed. *Re Simmons Limited (Toronto Division) and United Electrical Workers, Local 513; union grievance*, May 31, 1979. Schiff, Lucas, Sanderson—4 pages. (10)

Demotion

Change of job duties—violation of seniority provisions with regard to transfers; grievance allowed. *Re Scarborough Centenary Hospital Association and Canadian Union of Public Employees, Local 1320; Jagroop grievance*, June 19, 1979. Schiff, Land, Shakes—6 pages. (11)

Disciplinary—grievor's safety performance and attitude not satisfactory: culminating incident unrelated to work performance; absence of prior disciplinary record; grievance allowed. *Re Canadian Industries Limited, Industrial Chemicals Division and United Steelworkers of America, Local 6350; employee grievance*, June 25, 1979. Shime, Carriere, Morley—10 pages. (12)

Wages—no entitlement to "red-circling"; grievance dismissed. *Re United Automobile, Aerospace and Agricultural Implement Workers of America and Office and Professional Employees International Union, Local 343; anonymous grievance*, June 18, 1979. Shime—7 pages. (13)

Discharge

Absence because of illness: failure to provide adequate medical certificate—reinstatement without compensation. *Re Steinberg's Limited (Ontario) and Canadian Food and Allied Workers, Local 175; Wollborn grievance*, June 28, 1979. Weatherill—17 pages. (14)

Absenteeism—grievor's imprisonment a culminating incident in lengthy disciplinary record; employer discretion to refuse grievor's participation in temporary absence program while serving his sentence; grievance dismissed. *Re General Motors of Canada Limited and United Automobile Workers, Local 222; Callan grievance*, June 12, 1979. Palmer—9 pages. (15)

Absenteeism; collective agreement providing for termination where absence for more than five consecutive working days—discharge premature; grievance allowed. *Re International Harvester Company of Canada Limited and United Automobile Workers, Local 127; DeWitt grievance*, June 6, 1979. Rayner—8 pages. (16)

Absenteeism; grievor breaching plant rules by failing to report or justify absence from work; past disciplinary record considered; grievance dismissed. *Re Canadian Pittsburgh Industries, a Division of PPG Industries Canada Limited and Canadian Chemical Workers Union, Local 14; Zelinski grievance*, June 12, 1979. Majority: Kennedy, Churchill-Smith—9 pages; dissent: Adams—1 page. (17)

Absenteeism; grievor repeatedly failing to report to work or notify employer of any justification for his absences—alleged illness as a mitigating factor; grievance dismissed. *Re Budd Canada Limited and United Automobile Workers, Local 1451; Tieleman grievance*, June 22, 1979. O'Shea—11 pages. (18)

Absenteeism; grievor absent for 30 percent of working days over four years; grievance dismissed. *Re American Motors (Canada) Limited and United Automobile Workers, Local 1285; Thomson grievance*, June 1, 1979. O'Connor—8 pages. (19)

Absenteeism; innocent absenteeism caused by depression—disciplinary record examined; reinstatement without compensation. *Re Shopsy's Foods Limited and Canadian Food and Allied Workers, Locals 175 and 633; Everett grievance*, June 14, 1979. Kennedy, Simon, Sargeant—10 pages. (20)

Assault; grievor physically assaulting fellow employee—provocation; probationary reinstatement without compensation. *Re Labatt's Limited and International Brewery Workers Union, Local 304; Guidarelli grievance*, June 6, 1979. Majority: Shime, Cavaluzzo—12 pages; dissent: McDermott—3 pages. (21)

Back injury—continuation of heavy work not constituting unreasonable risk; grievance allowed. *Re Rudolph-McChesney Lumber Company Limited and Lumber & Sawmill Workers' Union, Local 2995; McChesney grievance*, June 20, 1979. Majority: Simmons, Wren—19 pages; dissent: Noonan. (22)

Breach of plant rules—grievor deliberately falsifying time card; mitigating factors considered; grievance dismissed. *Re Hayes-Dana Limited and United Automobile Workers, Local 676; Sebastiany grievance*, June 18, 1979. O'Shea—11 pages. (23)

Breach of trust—grievor pledging employer credit to secure money for personal use; mitigating factors of retribution and grievor's financial difficulties considered; suspension substituted. *Re Canadian Broadcasting Corporation and Canadian Union of Public Employees; Sgrignuoli grievance*, June 25, 1979. Arthurs—11 pages. (24)*

Consumption of alcohol on job alleged—substitution of lesser penalty not justified; grievance dismissed. *Re Firestone Steel Products of Canada and United Automobile Workers, Local 27, Unit 17; Mathieu grievance*, June 18, 1979. Welling—7 pages. (25)

Illegal strike—not established that grievor ring leader; suspension substituted. *Re Ford Motor Company of Canada Limited and United Automobile Workers, Local 707; Lanning grievances*, May 29, 1979. Palmer—27 pages. (26)

Inability to perform work alleged—grievor not receiving adequate instruction; grievance allowed. *Re The Ottawa Citizen and Ottawa Newspaper Guild, Local 205; Wilson grievance*, June 5, 1979. Brunner, Rupert, Dinsdale—14 pages. (27)

Incompetence, lack of interest in work—acceptable standards of work not maintained; grievance dismissed. *Re International Union, United Automobile, Aerospace and Agricultural Implement Workers of America and Newspaper Guild of Detroit; Chintoh grievance*, June 4, 1979. Egan—48 pages. (28)

Insubordination—emotional outburst amounting to insubordination; grievor's prior disciplinary record considered; alleged defiance of management authority; grievance dismissed. *Re Algonquin College of Applied Arts and Technology and Ontario Public Service Employees Union; Milley grievance*, June 25, 1979. Majority: H.D. Brown, Wright—22 pages; dissent: Edmondson—4 pages. (29)

Insubordination; failure to store personal belongings in locker—grievor on probation; grievance dismissed. *Re Ford Motor Company of Canada Limited and United Automobile Workers, Local 707; Edwards grievance*, May 29, 1979. Palmer—19 pages. (30)

Insubordination; grievor refusing to comply with a supervisor's order—grievor acting unreasonably even though order itself unreasonable. *Re City of Ottawa, Corporation of and The Civic Institute of Professional Personnel of Ottawa-Carleton; Welch grievance*, May 30, 1979. Majority: Scott, Gladu—14 pages; dissent: Emond—2 pages. (31)

Insubordination: loud and belligerent refusal to work—grievor's record including similar infractions; grievance dismissed. *Re Foxhead Inn Limited and Hotel & Restaurant Employees Union, Local 442; Wangler grievance*, June 4, 1979. Majority: O'Shea, McLaughlin—17 pages; dissent: Hague—1 page. (32)

Lateness—culminating incident alleged; grievance dismissed. *Re Atlas Steels and Canadian Steelworkers Union, Atlas Division; Bernard grievance*, June 4, 1979. Majority: Weatherhill, Baldwin—10 pages; dissent: Simpson—4 pages. (33)

Lengthy accident record: suspension substituted. *Re Browning Ferris Industries and Teamsters, Chauffeurs, Warehouseman and Helpers, Local 141; Facey grievance*, June 6, 1979. McCulloch, Kobryn, Sefton—15 pages. (34)

Misappropriation of narcotic pain killer with assistance of fellow employee—propriety of penalty considered; suspension substituted. *Re Ottawa General Hospital and Ontario Nurses' Association; Barnes grievance*, June 21, 1979. M.G. Picher, Done, Sirois—14 pages. (35)

Negligence—culminating incident: grievor's record indicating careless attitude toward work; alleged inexperience in latest job; grievance dismissed. *Re Canada Carbon and Ribbon Company Limited and United Steelworkers of America; Rowley grievance*, June 18, 1979. Majority: Palmer, Phelps—17 pages; dissent: Grills—1 page. (36)

Probationary employee—grievance dismissed. *Re Air Canada and Canadian Air Line Employees' Association; Abad grievance*, June 14, 1979. Brandt—53 pages. (37)*

Quit alleged: grievor suspended and demoted prior to event in question; grievance allowed. *Re Hydro Electric Commission of the Borough of York and Canadian Union of Public Employees, Local 11; Thompson grievance*, June 15, 1979. Majority: Schiff, Geiger—8 pages; dissent: Millman—5 pages. (38)

Theft—established on balance of probabilities; grievance dismissed. *Re Silverwood Dairies and Canadian Union of Operating Engineers and General Workers, Local 101; Ellis grievance*, June 7, 1979. Majority: Weatherill, Filion—8 pages; dissent: Lang—8 pages. (39)

Theft of employer's property: small quantity of food taken; suspension substituted. *Re Cara Operations Limited and Hotel and Restaurant Employees and Bartenders International Union; Marcelino grievance*, May 16, 1979. Brunner, Tate, Sanderson—7 pages. (40)

Use of company time and material for personal project: suspension substituted. *Re 3M Canada Incorporated and United Automobile Workers, Local 27; unnamed grievor*, June 21, 1979. Betcherman—10 pages. (41)

Voluntary resignation alleged—separation pay accepted; grievance dismissed. *Re The Ottawa Citizen and Ottawa Newspaper Guild, Local 205; Hartnett grievance*, June 20, 1979. Majority: H.D. Brown, Dinsdale—23 pages; dissent: Rupert. (42)

Discipline

Absenteeism: grievor alleging illness as excuse—medical certificate not necessary; grievance allowed. *Re Ford Motor Company of Canada Limited and United Automobile Workers*. See (26) *supra*. (43)

Absenteeism, lateness: minor infringements alleged; grievance dismissed. *Re Ford Motor Company of Canada Limited and United Automobile Workers*. See (26) *supra*. (44)

Failure to report—grievor failed to notify employer of his illness and inability to report to work; evidence of attempts by grievor's mother to notify employer; grievance allowed. *Re Bell Canada and Communications Workers of Canada; McPhaden grievance*, June 20, 1979. Springate, Switzman, Gray—6 pages. (45)

Illegal strike—not established that grievor acting as leader; lesser penalty substituted. *Re Ford Motor Company of Canada Limited and United Automobile Workers, Local 707; McDade grievance*, May 29, 1979. Palmer—16 pages. (46)

Illegal strike: grievor claiming threats prevented return to work—not sufficient attempt to return to work; grievance dismissed. *Re Ford Motor Company of Canada Limited and United Automobile Workers, Local 707; Canning grievance*, May 17, 1979. Palmer—10 pages. (47)

Improper conduct while carrying out duties as security officer—penalty appropriate; grievance dismissed. *Re McMaster University and McMaster University Security Officers Association; Kindred grievance*, June 25, 1979. H.D. Brown—13 pages. (48)

Insubordination—grievor discharged for refusing work re-assignment; employer substituted a suspension in response to grievance; grievance dismissed. *Re Elan Tool & Die Limited and United Automobile Workers, Local 127; Morrell grievance*, June 4, 1979. Willes—7 pages. (49)

Insubordination: threatening remarks to supervisor alleged—company not satisfying onus of proof; grievance allowed. *Re Ford Motor Company of Canada Limited and United Automobile Workers*. See (46) *supra*. (50)

Limitation periods—grievor discipline for involvement in a highway accident; seventy-two hour limitation on imposing disciplinary measures from the time infraction becomes known to company; issue of calculating period; grievance allowed. *Re Flanagan Delivery Service and Teamsters, Local 141; Abbott grievance*, June 8, 1979. Palmer, Kobryn, Linder—10 pages. (51)

Negligence—grievor failing to take ordinary precautions in performance of duties; fellow employee injured as a result; grievance dismissed. *Re Spruce Falls Power and Paper Company Limited and Lumber and Sawmill Workers' Union, Local 2995; Tremblay grievance*, May 29, 1979. Brunner, Wren, Wright—9 pages; addendum: Wren—1 page. (52)

Suspension pending trial on criminal charges—grievor's presence not an unreasonable risk for employer; grievances allowed. *Re Commonwealth Holiday Inns of Canada Limited and Hotels, Clubs, Restaurants, Taverns Employees Union, Local 261; Greenwell, Corkery & Lalonde grievances*, June 18, 1979. Majority: Curtis, Robichaud—10 pages; dissent: Haines—10 pages. (53)

Union official attending to union business without permission—business not urgent; grievance dismissed. *Re Union Gas Limited and Canadian Chemical Workers' Union, Local 6; Humphries grievance*, June 12, 1979. Majority: McLaren, Storie—16 pages; dissent: Pretty—1 page. (54)*

Unlawful strike; withdrawal of services during normal shift—suspension not discriminatory; grievance dismissed. *Re Canadian Broadcasting Corporation and Canadian Union of Public Employees; Rogers grievance*, May 28, 1979. Shime—18 pages. (55)*

Grievance Procedure

Abandonment—second grievance filed after employer reduced penalty for grievor's insubordination; first grievance still in progress; preliminary objection overruled. *Re Elan Tool & Die Limited and United Automobile Workers, Local 127*. See (49) *supra*. (56)

Abandonment; union filing a new grievance after abandoning first: only one action in issue; preliminary objection sustained. *Re Stormont, Dundas and Glengarry County Board of Education and Office and Professional Employees International Union, Local 483; union grievances*, June 11, 1979. Curtis—4 pages. (57)

Additional grounds for discharge raised at hearing—scope of arbitration not extended. *Re Rudolph—McChesney Lumber Company Limited and Lumber & Sawmill Workers' Union*. See (22) *supra*. (58)

Failure to make required deposit as security for costs—adjournment requested: adjourned subject to conditions. *Re Toronto Argonaut Football Club and Tony Hill*, May, 1979. O'Shea, Rutley, Torrance—7 pages. (59)

Multiple grievances; employer refused to process identical grievances pending determination of initial grievance; union having carriage of grievance but not entitled to abuse grievance procedure. *Re International Nickel Company of Canada, Limited and United Steelworkers of America, Local 6500; union grievance*, June 18, 1979. Majority: Shime, Gilmore—20 pages; partial dissent: Rouleau—1 page. (60)*

Timeliness—no reasonable grounds for extending time limits; grievance dismissed. *Re St. Joseph's Hospital (Chatham) and Service Employees Union, Local 210; anonymous grievance*, December 29, 1978. Majority: Lunney, Farrar—4 pages; dissent: McConville. (61)

Timeliness—discretion to extend time limits—evidence of on-going discussions between parties prior to filing of grievance; reasonable grounds for extending time limits. *Re International Harvester Company of Canada Limited and United Automobile Workers, Local 127*, See (16) *supra*. (62)

Union elections interfering with processing of grievance; company allowing reasonable extension of time; extension of time limits not justified. *Re Inco Metals Company and United Steelworkers of America; Garner grievance*, May 30, 1979. Majority: H.D. Brown, Filion—25 pages; dissent: Urbanovics. (63)

Hiring Hall

Employees refusing to work overtime—union not in breach of obligation to supply employees. *Re Le Droit Ltee and L'Union Typographique d'Ottawa; company grievance*, June 11, 1979. Weatherill—8 pages. (64)

Holiday Pay

Holiday falling on regular day off—employees entitled to payment; grievance allowed. *Re Peel, Regional Municipality of, and Canadian Union of Public Employees, Local 2101; union grievance*, June 11, 1979. Majority: Kennedy, Griffin—7 pages; dissent: Houck—4 pages. (65)

Illness on qualifying day—doctor's certificate not required to establish illness; grievance allowed. *Re Sunar, Division of Hauserman, Limited and United Steelworkers of America, Local 3292; Weadick grievance*, June 12, 1979. O'Shea—9 pages. (66)

Illness on qualifying days—doctor's certificate not required to establish illness; grievance allowed. *Re Sunar, Division of Hauserman, Limited and United Steelworkers of America, Local 3292; Richards grievance*, June 12, 1979. O'Shea—14 pages. (67)*

Remembrance Day falling on Saturday: grievors entitled to pay although not normally working on Saturdays; grievance allowed. *Re City of Mississauga, Corporation of, and Canadian Union of Public Employees, Local 66; group grievance*, June 5, 1979. H.D. Brown, Walsh, Macdougall—7 pages. (68)

Hours of Work

Lunch breaks—employer unilaterally altering policy of paid lunch breaks; grievance allowed. *Re T.R.S. Food Service Limited and Retail, Wholesale and Department Store Union, Local 440; policy grievance*, June 21, 1979. Majority: Kennedy, Spaxman—5 pages; dissent: Winkler—3 pages. (69)

Notice of change of shift—notice running from former starting time; grievance allowed. *Re Imperial Roadways Ltd. and Teamsters, Local 938; Caruana grievance*, June 27, 1979. Majority: P.C. Picher, Tait—6 pages; dissent: Cowan—1 page. (70)

Illness

Ability to work—grievor on sick leave for several months; presently capable of performing work; risk of aggravating illness if returned to work; risk limited solely to grievor; grievance allowed. *Re Daal Specialties (Canada) Limited and United Automobile Workers, Local 1474; Willison grievance*, June 7, 1979. Rayner—7 pages. (71)

Reduction of pay—lower reduction applicable; grievance allowed. *Re Weston Bakeries Limited and Milk and Bread Drivers, Dairy Employees, Caterers and Allied Workers, Local 647; Sullivan grievance*, May 29, 1979. Teplitsky, Abrams, Thomson—3 pages. (72)

Return to work—grievor not giving proper notice; grievance dismissed. *Re Dominion Stores Limited and United Steelworkers of America, Local 14045; Wiseman grievance*, June 5, 1979. O'Shea—12 pages. (73)

Job Posting

Recall of laid-off employee—job posting provisions not applicable; grievance dismissed. *Re Newman Structural Steel Limited and International Association of Bridge, Structural and Ornamental Iron Workers, Local 734; union grievance*, June 14, 1979. Ellis—14 pages. (74)*

Lay-Off

Appropriate seniority list—departmental seniority appropriate where no time to give five days' notice; grievance dismissed. *Re Kelsey—Hayes Canada Limited and United Automobile Workers, Local 636; policy grievance*, June 22, 1979. O'Shea—8 pages. (75)

Bumping rights; employer requiring laid-off employees to bump least senior employee in a given job—issue of management's right to impose such a condition; grievance allowed. *Re Beach Appliances International Limited and United Automobile Workers; policy grievance*, June 19, 1979. Scott—7 pages. (76)

Bumping rights; grievor re-assigned to different job within the same department following the lay-off of another employee—alleged entitlement to bumping rights as an affected employee; grievance dismissed. *Re Beach Appliances International Limited and United Automobile Workers; Joanisse grievance*, June 19, 1979. Scott—6 pages. (77)

Bumping rights; limited amount of work available; grievance allowed in part. *Re John T. Hepburn, Ltd. and United Steelworkers, Local 3335; Clarke grievance*, June 28, 1979. Baum, Nicol, Farrar—7 pages. (78)

Sub-contracting prohibited if resulting in lay-off; grievors transferred to different jobs—not a lay-off; grievance dismissed. *Re Dominion Forge Company Limited and United Automobile Workers, Local 195; group grievance*, June 20, 1979. Brandt—9 pages. (79)

Training period—laid-off employee not entitled to training period; grievance dismissed. *Re Kirsch of Canada Limited and United Automobile Workers, Local 636; Langille grievance*, June 27, 1979. Gibson—11 pages. (80)

Work reduction: grievor accepting transfer to lesser paying job—not a lay-off; grievance dismissed. *Re Diwalt, Division of Homeware Industries Limited and United Steelworkers of America; Pioli grievance*, June 1, 1979. O'Shea—14 pages. (81)

Bumping rights—qualifications for jobs: alleged experience gained in temporary assignment; mutual understanding exempting from consideration such experience during lay-off situation; grievance dismissed. *Re Canadian Car Division, Hawker Siddeley Canada Limited and United Automobile Workers, Local 1075; Smith grievance*, April 30, 1979. Duchesneau-McLachlan—16 pages. (82)

Bumping rights—determination of seniority: onus on grievor to demonstrate violation of collective agreement; grievance dismissed. *Re Canadian Car Division, Hawker Siddeley Canada Limited and United Automobile Workers, Local 1075; Bourque grievance*, April 30, 1979. Duchesneau-McLachlan—6 pages. (83)

Leave of Absence

Sabbatical leave—grievor meeting standards; grievance allowed. *Re Board of Governors of the University of Windsor and The Faculty Association; Woodyard grievance*, May 28, 1979. Kruger—9 pages. (84)

Overtime

Distribution—work not covered by collective agreement; grievance dismissed. *Re DeLaval Turbine Canada Ltd. and International Association of Bridge, Structural and Ornamental Iron Workers, Shopmen's, Local 834; union grievance*, June 18, 1979. Dunn—5 pages. (85)

Distribution: grievor not asked to work because work required a different classification—grievance dismissed. *Re Rockwell International of Canada Limited and United Automobile Workers, Local 1297; Sipila grievance*, June 13, 1979. Dunn—4 pages. (86)

Improper allocation of overtime admitted: inkind remedy granted. *Re Dominion Stores and United Steelworkers of America, Local 14045; Wenger grievance*, June 12, 1979. Rayner—8 pages. (87)

Probationary employee—right to share in distribution of overtime; grievance dismissed. *Re Dunham-Busch of Canada Limited and United Steelworkers of America, Local 3998; Rogers grievance*, June 11, 1979. Majority: O'Shea, Anderson—9 pages; dissent: Hine—2 pages. (88)*

Sub-contracting of overtime work—no obligation to offer overtime work to bargaining unit employees; grievance dismissed. *Re City of Kingston, Corporation of and Canadian Union of Public Employees, Local 109; policy and Fitzgerald et al grievances*, June 21, 1979. Majority: Simmons, Warmington—12 pages; dissent: Arsenault—2 pages. (89)

Overtime Pay

Calculation—grievor delayed in delivering goods by virtue of snow storm; claimed overtime for period he was held up; alleged exception to overtime provisions; grievance dismissed. *Re Firestone Steel Products of Canada, Division of Dayton Tire Canada Limited and Teamsters, Local 141; McMahon grievance*, June 25, 1979. Majority: H.D. Brown, Drmaj—9 pages; dissent: Kobryn—4 pages. (90)

Entitlement; grievor stranded by snow storm and unable to return to employer premises before end of shift—overtime not payable; grievance dismissed. *Re Union Gas Limited and Oil, Chemical and Atomic Workers' International Union, Local 9-14; Haight grievance*, June 18, 1979. Majority: Kennedy, Storie—9 pages; dissent: Ublansky—3 pages. (91)*

Grievor re-scheduled temporarily to new shift—not beyond normal daily hours; grievance dismissed. *Re Pilkington Brothers (Canada) Limited and United Glass and Ceramic Workers of North America, Local 295; McIntyre grievance*, June 11, 1979. Majority: Brandt, Churchill-Smith—13 pages; dissent: Wilson—1 page. (92)

Pensions

Contribution to pension plan on hourly basis; calculation to be based on hours worked except for leaves of absence with pay. *Re Diamond National of Canada Limited and International Woodworkers of America; union grievance*, June 6, 1979. Majority: Beck, Cook—12 pages; dissent: Navarretta. (93)

Probationary Employees

Discharge—grievance arbitrable. *Re Air Canada and Canadian Air Line Employees' Association*. See (37) *supra*. (94)*

Promotion

Non-bargaining unit employee awarded job—no proof that grievor not competent to perform job; grievance allowed. *Re Kingston General Hospital and Canadian Union of Public Employees, Local 1974; Bellefeuille grievance*, June 21, 1979. Simmons, Pettigrew, Wright—10 pages. (95)

Qualifications—grievor adequately qualified; grievance allowed. *Re Borough of Scarborough, Corporation of, and Scarborough Civic Employees Union, Local 368; Beamish grievance*, June 15, 1979. H.D. Brown—18 pages. (96)

Qualifications—grievor having approximately equal qualifications; grievance allowed. *Re Northern Telephone Limited and Communications Workers of Canada; Nolet grievance*, June 29, 1979. Majority: Weatherill, Mather—11 pages; did not concur: Aubé. (97)

Qualifications—grievor not having "relatively equal" skill and ability; grievance dismissed. *Re Ivaco Rolling Mills and United Steelworkers of America, Local 7940; Rouleau grievance*, May 31, 1979. Curtis—9 pages. (98)

Qualifications—grievor not possessing immediate ability; grievance dismissed. *Re Collingwood Shipyards, Division of Canadian Shipbuilding Engineering Ltd. and United Steelworkers of America, Local 6320; Beauregard grievance*, June 20, 1979. H.D. Brown, Reeds, Nash—14 pages. (99)

Qualifications—lack of formal education—grievor adequately qualified; grievance allowed. *Re Ontario Hydro and Canadian Union of Public Employees' Union, Local 1000; King grievance*, May 31, 1979. Majority: Brunner, McCullough—21 pages; dissent: Chatland—2 pages. (100)

Qualifications; outside person hired because of extraordinary responsibilities expected as a result of reorganization of job functions—grievance dismissed. *Re Jacuzzi Canada Limited and United Steelworkers of America, Local 8485; Maharaj grievance*, June 6, 1979. Barton, Muselius, Morley—10 pages. (101)

Trial period—no entitlement to training period; grievance dismissed. *Re City of Brantford, Corporation of, and Brantford Civic Employees' Union; Porteous grievance*, June 27, 1979. Majority: Kennedy, Noble—9 pages; dissent: Brown—1 page. (102)

Recall

Wage protection—only applicable where grievor recalled to former job; grievance dismissed. *Re Northern Telecom Limited and United Electrical, Radio and Machine Workers of America, Local 531; Adams grievance*, June 14, 1979. Dunn—4 pages. (103)

Relocation

Entitlement—seniority only relevant where relocation of one or more representatives. *Re International Association of Machinists and Aerospace Workers and IAM Representatives Association; Paulson grievance*, May 28, 1979. Jolliffe—21 pages. (104)

Relocation Expenses

Property divided to facilitate sale; employer only admitted liability for property on which residence situated—grievance allowed. *Re Her Majesty The Queen In Right Of The Province of Ontario and Ontario Provincial Police Association, Incorporated; Toohey grievance*, June 6, 1979. Majority: Shime, Goudge—7 pages; dissent: Noonan—2 pages. (105)

Transfer to different location—no personal dislocation within meaning of the plan; grievance dismissed. *Re Her Majesty The Queen In Right Of The Province of Ontario and Ontario Provincial Police Association, Incorporated; Sleep grievance*, June 6, 1979. Majority: Shime, Noonan—8 pages; partial dissent: Goudge—2 pages. (106)

Reporting Pay

Circumstances leading to shutdown not precisely identified—employer not establishing circumstances beyond its control; grievance allowed. *Re Beardmore, A Division of Canada Packers Ltd. and Ontario Council of Leather Workers and Canadian Food & Allied Workers, Local P479; Parent grievance*, June 20, 1979. Majority: Beatty, Deans—13 pages; dissent: Herlihy—1 page. (107)

Failure to provide work—employees sent home because of fire on premises; alleged exception to reporting pay provisions of collective agreement; grievance allowed. *Re Amoco Fabrics, Division of Amoco Canada Petroleum Company Limited, and International Woodworkers of America, Local 2-600; policy grievance*, June 19, 1979. Majority: O'Shea, Smiley—16 pages; dissent: Paulin—2 pages. (108)

Scheduling of Work

Continuous operations—employer introducing a seven day continuous shift operation; no guarantee of normal hours under collective agreement; premium rates provided for work outside normal hours; grievance dismissed. *Re Abex Industries Limited and United Steelworkers of America, Local 4927; policy grievance*, June 20, 1979. Hinnegan—11 pages. (109)*

Sick Pay

Verification of illness—general policy not applicable; grievance allowed. *Re Sarnia General Hospital, Hospital Commission, and London and District Service Workers Union, Local 220; Laurence grievance*, June 15, 1979. Majority: H.D. Brown, Switzman—12 pages; dissent: Sanderson—2 pages. (110)

Transfer

Temporary transfer—seniority provisions not applicable; grievance dismissed. *Re Public Utilities Commission of the City of Stratford and International Brotherhood of Electrical Workers, Local 636; Stewart grievance*, June 12, 1979. Rayner, Heslinga, Stacey—5 pages. (111)

Vacations

Calculation of service—years spent as part-time employee included; grievance allowed. *Re City of Kingston, Corporation of, and Canadian Union of Public Employees, Local 141; Wallace grievance*, June 26, 1979. Simmons—6 pages. (112)

Wages

Higher rate incorrectly paid to some employees—other employees doing same work not entitled to higher rate; grievances dismissed. *Re Storwall International Limited and United Steelworkers of America, Local 3257; Cain and Tessier grievances*, May 31, 1979. Majority: H.D. Brown, O'Byrne—15 pages; dissent: Curry—1 page. (113)

Tips: waiters required to pay 2.5% of bill to maitre d' as share of tip: "reasonable rate"; grievances dismissed. *Re Windsor Arms Hotel Limited and Canadian Food and Associated Services Union; employee grievances*, June 4, 1979. Majority: Weatherill, Wakely—13 pages; dissent: Park—2 pages. (114)*

Welfare Plans

Entitlement—grievor on Workmen's Compensation considered to be employee; grievance allowed. *Re United Tire & Rubber Mfg. (Toronto) Ltd. and United Rubber, Cork, Linoleum & Plastic Workers of America, Local 973; McPhilemy grievance*, June 5, 1979. Haladner—15 pages. (115)*

Life insurance—employer only obligated to provide insurance plan; grievance dismissed. *Re Renfrew County Board of Education and Renfrew County Secondary School Teachers Federation; Miller grievance*, June 11, 1979. Beatty, Felker, Lafrance—7 pages. (116)

Weekly indemnity coverage provided by outside insurer—employer not directly liable; grievance dismissed. *Re Worthington (Canada) Ltd. and International Association of Machinists and Aerospace Workers, Local 1673; Kekosz grievance*, June 22, 1979. Majority: O'Shea, McNaughton—16 pages; dissent: Jardine. (117)

Work Assignment

Bargaining unit work assigned to foreman—grievance allowed; compliance order not granted. *Re American Motors (Canada) Ltd. and United Automobile Workers, Local 1285; Katkic grievance*, June 20, 1979. Sheppard—12 pages. (118)

Manning requirement—maintenance and operation work not requiring separate crews; grievance dismissed. *Re Kelsey-Hayes Canada Limited and Canadian Union of Operating Engineers, Local 100; policy grievance*, June 8, 1979. Betcherman—6 pages. (119)

The following awards in interest arbitrations under *The Hospital Labour Disputes Arbitration Act* were also filed with the Commission during the month of June, 1979.

Blue Water Rest Home and Service Employees' Union, Local 210, O'Shea, McConville, Wassman—14 pages.

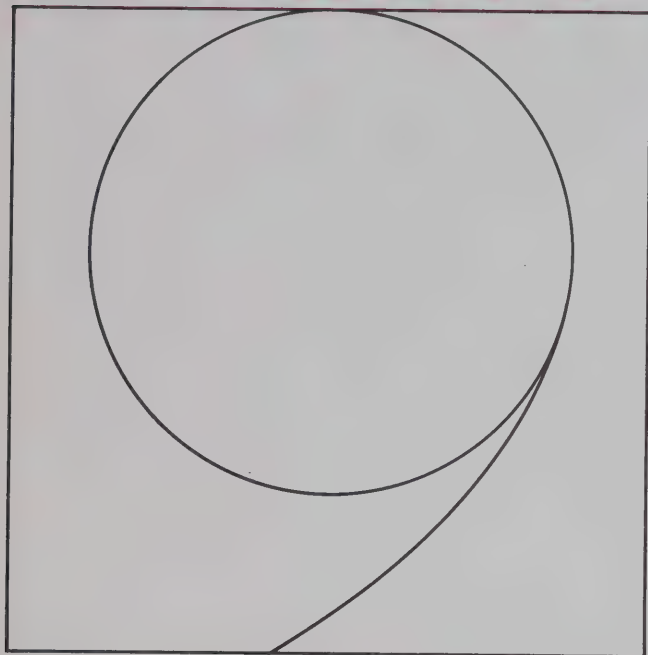
Brouillettes Manor Limited and Service Employees Union, Local 210, Davidson, McConville, Bartlet—9 pages.

Green Acres Nursing Home and Pharmacists and Professional Employees Association, Local 1976, Potter, Bowden, Mastin—29 pages.

The Board of Governors of The Kingston Hospital Commonly Known as Kingston General Hospital and Ontario Nurses' Association, Swan—89 pages; dissent: Belford—8 pages; addendum: Swan—2 pages; dissent in part: Walsh—3 pages.

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Arbitrator

Professor J.D. Whyte, who is on sabbatical will not be available for arbitrations until August, 1981.

Awards

The following awards were filed with the Ontario Labour-Management Arbitration Commission during the month of July, 1979, under Section 6(2) of Ontario Regulation 635, R.R.O. 1970.

The summary was prepared at the Faculty of Law, Queen's University, under the supervision of C.G. Simmons, B.A., B.C.L., LL.M., and D.D. Carter, B.A., B.C.L., LL.B.

*Indicates award to be reported in full or in part in *Labour Arbitration Cases*.

Arbitrability

Discipline and discharge of police constables — conflict between Regulations under *Police Act* and collective agreement — grievance arbitrable. *Re Metropolitan Toronto Board of Commissioners of Police and Metropolitan Toronto Police Association; Munro grievance*, July 7, 1979. Swan — 19 pages. (1)*

Reference to arbitration untimely — grievance not arbitrable. *Re Air Canada and International Association of Machinists and Aerospace Workers, Local 148; Thompson grievance*, July 4, 1979. Swan — 8 pages. (2)

Union grievance arising from memorandum of agreement — memorandum not part of collective agreement — grievance dismissed. *Re Bell Canada and Communications Workers of Canada (Craft and Services Employees); union grievance*, June 6, 1979. Majority: Brunner, Carter — 11 pages; dissent: Walsh — 2 pages. (3)

Bargaining Unit

Clerical duties of lead-hand re-assigned to office personnel — no loss of work within bargaining unit; grievance dismissed. *Re Hayes-Dana Limited and United Automobile Workers, Local 676; Devilliers grievance*, July 18, 1979. H.D. Brown — 11 pages. (4)

Management personnel alleged to be performing work normally performed by bargaining unit employees — prior decision of *Ontario Labour Relations Board* defining the appropriate bargaining unit considered; grievance dismissed. *Re Commonwealth Holiday Inns of Canada Company Limited and Hotel and Clubs Employees' Union, Local 299; policy grievance*, July 27, 1979. Majority: Beatty, Haines — 12 pages; dissent: Tate — 4 pages. (5)

Work assignment — work performed by employee outside of the bargaining unit; alleged to be a part-time employee; grievance allowed. *Re Shopsy's Foods Limited and Canadian Food and Allied Workers, Local 175; Jarvie grievance*, July 9, 1979. Majority: Brent, Simon — 12 pages; dissent: Sargeant — 10 pages. (6)

Classification

Claim for higher rate for some work performed — whether doing work associated with higher classification — grievance dismissed. *Re Allied Chemical Canada, Ltd., and United Automobile Workers, Local 39; Tiefenbach grievance*, July 16, 1979. Kruger — 5 pages. (7)

Work of higher classification performed — grievance allowed. *Re Falconbridge Nickel Mines Limited and Sudbury Mine, Mill and Smelter Workers Union, Local 598; Clement, Popovich grievances*, June 28, 1979. Majority: H.D. Brown, McIntyre — 15 pages; dissent: Gordon — 12 pages. (8)

Work of higher classification performed — grievor not having licence required of permanent employees at that level — grievance allowed. *Re Borough of North York, Corporation of and North York Civic Employees Union, Local 94; Cryderman grievance*, July 4, 1979. Beck — 21 pages. (9)

Clothing Allowance

Cleaning of police officers' shirts — shirt part of uniform; grievance allowed. *Re Town of Parry Sound, Corporation of and Town of Parry Sound Police Association; union grievance*, July 11, 1979. H.D. Brown — 10 pages. (10)

Damages

Loss arising from October 14, 1976 work stoppage: one day's contribution to unemployment and health insurance etc. claimed — grievance dismissed. *Re ESB Canada Limited and United Electrical, Radio and Machine Workers of America, Local 514; company grievances*; July 17, 1979. Majority: Dunn, Longridge — 3 pages; dissent: Drmaj — 3 pages. (11)

Demotion

Incompetence alleged — allegation not established; grievance allowed. *Re Tri-Town Nursing Home Limited (Kapuskasing) and Canadian Union of Public Employees, Local 1771; Drolet grievance*, July 4, 1979. Dunn — 7 pages. (12)

Discharge

Absenteeism — innocent absenteeism because of illness; grievance allowed. *Re Hayes-Dana Limited and United Automobile Workers, Local 676; Wardell grievance*, July 4, 1979. Weatherill — 7 pages. (13)

Absenteeism — possibility of regular attendance in future; conditional reinstatement without compensation. *Re Modular Windows of Canada and United Steelworkers of America, Local 2729; Intriago grievance*, July 26, 1979. Lederman — 14 pages. (14)

Alcoholism: failure to adhere to rehabilitation program: prior warning — whether barred by prohibition of "sickness" as grounds for discharge — grievance dismissed. *Re Molson's Brewery (Ontario) Limited and Canadian Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers, Local 304; unnamed grievor*, July 24, 1979. Adell — 16 pages. (15)*

Assault — grievor not aggressor: reinstated without compensation. *Re Budd Canada, Inc. and United Automobile Workers, Local 1451; Coore grievance*, July 18, 1979. O'Shea — 12 pages. (16)

Assault — provocation alleged — whether substitution of penalty precluded — suspension substituted. *Re Bonar and Bemis Limited and Canadian Paperworkers Union, Local 1178; Belisle grievance*, July 12, 1979. Weatherill, Paxton, Mitchnik — 11 pages. (17)

Assault on foreman — culminating incident; grievance dismissed. *Re Standard Paper Box Limited and Canadian Paperworkers Union, Local 1335; Asselstine grievance*, July 11, 1979. H.D. Brown, Quaife, Churchill-Smith — 18 pages. (18)

Contract cancellation — contract separate from collective agreement — grievance dismissed. *Re National Arts Centre Corporation and International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada, Local 471; McDonough grievance*, July 12, 1979. Weatherill, Wright, Laishley — 6 pages; addendum — 1 page. (19)

Culminating incident — grievor failing to exhibit a normal work effort; grievance dismissed. *Re General Motors of Canada Limited and United Automobile Workers, Local 222; Johnson grievance*, July 11, 1979. Palmer — 17 pages. (20)

Dishonesty: grievor acquitted of criminal charges — suspension substituted. *Re Lummus Company Canada Limited and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 879; Uhrig grievance*, July 18, 1979. Majority: Kennedy, Hurd — 24 pages; dissent: Sanderson — 2 pages. (21)

False statements concerning the performance of job duties — prior disciplinary record considered; grievance dismissed. *Re St. Joseph's General Hospital (Elliot Lake) and Ontario Nurses' Association; St. Denis grievance*, June 28, 1979. Majority: Gorsky, Ronson — 13 pages; dissent: Grant. (22)

Falsification of time cards: honour system in effect; grievance dismissed. *Re Hayes-Dana Limited and United Automobile Workers, Local 676; McNamara grievance*, June 27, 1979. O'Shea — 13 pages. (23)

Insubordination — refusal to follow employer's orders; general unsatisfactory behavior toward customers and employer — grievances dismissed. *Re 401548 Ontario Limited and Retail, Wholesale and Department Store Union, Local 448; George, Howe grievances*, July 23, 1979. Rubenstein — 21 pages. (24)

Insubordination; refusal to perform assigned work — grievance dismissed. *Re Southam-Murray, Division of Southam Printing Limited, and Warehousemen and Miscellaneous Drivers Union, Local 419; Hyman grievance*, July 3, 1979. Majority: Swan, Davies — 11 pages; did not concur — Weir. (25)

Intoxication; grievor reporting to work in intoxicated state — prior disciplinary record — suspension substituted without compensation. *Re Superior Concrete Products (London) Limited and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 141; (estate of) Atwell grievance*, June 12, 1979. Brunner, Kobryn, Caskey — 9 pages; addendum: Kobryn — 2 pages. (26)

Leaving work place without authorization: altercation with security guard — suspension substituted. *Re Canadian Mine Enterprises Ltd. and United Steelworkers of America; Newton grievance*, June 28, 1979. Brunner — 14 pages. (27)

Loss of seniority because of failure to return from leave of absence — grievor not reverting to probationary status; grievance allowed. *Re Firestone Canada Ltd. and United Rubber, Cork, Linoleum and Plastic Workers of America, Local 113; Vrantzis grievance*, June 14, 1979. Rubenstein — 18 pages; partial dissent: Walsh — 3 pages; dissent: Furlong. (28)

Memorandum of understanding making grievor subject to immediate discharge for subsequent absences — grievance dismissed. *Re McDonnell-Douglas Canada Limited and United Automobile Workers, Local 1967; Tomlinson grievance*, July 18, 1979. Rayner — 7 pages. (29)

Negligence — breach of company safety rules endangering the life of another employee and causing damage to company property — grievance dismissed. *Re Reynolds Aluminum Company of Canada Limited and International Molders and Allied Workers' Union; Roy grievance*, July 10, 1979. Beck — 15 pages. (30)

Negligence — grievor involved in an accident; alleged mechanical failure — grievance dismissed. *Re McKinlay Transport Limited and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 880; Curtis grievance*, July 17, 1979. Majority: Dunn, Singleton — 12 pages; dissent: Kobryn — 3 pages. (31)

Physical disability rendering grievor unable to perform job — failure of company to provide alternate employment — grievance allowed. *Re Hayes-Dana Inc. and United Automobile Workers, Local 676; Warner grievance*, July 10, 1979. O'Shea — 12 pages. (32)

Refusal to accept transfer — grievance allowed. *Re 401548 Ontario Limited and Retail, Wholesale and Department Store Union, Local 448; Harris grievance*, July 23, 1979. Rubenstein — 21 pages. (33)

Unprovoked assault on supervisor — whether substitution of other penalty warranted — grievance dismissed. *Re Fabricated Steel Products (Windsor) Ltd. and United Automobile Workers, Local 195; Grey grievance*, July 18, 1979. Brent — 8 pages. (34)

Unsatisfactory work performance alleged: numerous complaints from customers; prior warnings issued — grievance dismissed. *Re Hostess Food Products Limited and Retail, Wholesale and Department Store Union, Local 579; Lajeunesse grievance*, July 10, 1979. Majority: Hinnegan, Fenton — 10 pages; dissent: LaChance — 1 page; addendum: Hinnegan — 3 pages. (35)

Unsatisfactory work performance: reading and sleeping on job — grievance dismissed. *Re Bell Canada and Communications Workers of Canada; Rego grievance*, May 25, 1979. Majority: Brandt, Healy — 48 pages; dissent: Walsh — 3 pages. (36)

Violation of non-smoking order: warning from supervisor leading to abusive language from grievor — reinstatement without compensation. *Re Canadian Clothiers Company and Toronto Joint Board Amalgamated Clothing and Textile Workers Union; Cutrone grievance*, June 29, 1979. Arthurs — 3 pages. (37)

Discipline

Absence from work — grievor failing to justify absence; grievance dismissed. *Re Canadian Timkin Limited and United Steelworkers of America; Turner grievance*, May 23, 1979. J.L. Roberts — 8 pages. (38)

Abusive language directed at security guard: apology tendered — grievance dismissed. *Re Carling O'Keefe Breweries Ltd. and Brewery Workers, Local 325; O'Reilly grievance*, July 18, 1979. Rayner — 7 pages. (39)

Abusive language alleged — no evidence of abusive remarks; grievance allowed. *Re Carling O'Keefe Breweries Ltd. and Brewery Workers, Local 325; Mullally grievance*, July 18, 1979. Rayner — 4 pages. (40)

Conflict of interest; grievor alleged to be soliciting work from customers of the employer — evidence insufficient; grievance allowed. *Re Harrison Peacock Fuels and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 352; Barrett grievance*, July 6, 1979. Rayner, Contardi, Tribe — 8 pages. (41)

Carelessness resulting in accident — grievor having poor safety record; grievance dismissed. *Re Firestone Canada Inc. and United Rubber, Cork, Linoleum and Plastic Workers of America, Local 494; Baker grievance*, July 18, 1979. H.D. Brown — 11 pages. (42)

Failure to follow job instructions alleged — unusual task, instructions unclear; no evidence of defiance by grievor — grievance allowed. *Re General Mills Canada, Limited and American Federation of Grain Millers, Local 230; Sutherland grievance*, June 29, 1979. Linden — 10 pages. (43)

Fighting — grievor's acts not constituting provocation; grievance allowed. *Re Keeprite Products Limited and Keeprite Workers' Independent Union; Mirco grievance*, July 26, 1979. Palmer — 7 pages. (44)

Improper absence from work station; abusive conduct towards foreman: grievance dismissed. *Re Dominion Chain Company and International Association of Machinists and Aerospace Workers; Finch grievance*, July 19, 1979. Majority: Weatherill, MacDermid — 8 pages; dissent: Jardine. (45)

Insubordination; refusal of work assignment during lunch hour — grievances dismissed. *Re Phillips Cables Limited and United Steelworkers of America, Local 7276; Sgro, Vieira grievances*, July 11, 1979. O'Shea — 12 pages. (46)

Insubordination; refusal to perform work because safety rules required the use of extra equipment — grievance allowed. *Re Hydro Electric Commission of the Borough of North York and Canadian Union of Public Employees, Local 11; Smith grievance*, July 16, 1979. Majority: Weatherill, Wren — 9 pages; dissent: Millman. (47)

Lateness — prior warnings given; reasonable excuse alleged — grievance dismissed. *Re Central Chevrolet Oldsmobile (London) Limited and United Automobile Workers, Local 27; Mills grievance*, July 12, 1979. Majority: O'Shea, Stringer — 13 pages; dissent: Blackburn — 2 pages. (48)

Negligence; grievor damaging company property — grievance dismissed. *Re Thibodeau-Finch Express Limited and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 938; Sokoloski grievance*, July 10, 1979. M.G. Picher, Petryshen, Fosbery — 9 pages. (49)

Negligence — fire destroying employer's property — gross negligence not established; grievance allowed. *Re Spruce Falls Power and Paper Company Limited and Sawmill Workers' Union, Local 2995; Audovic, Lequerec, Swicca grievances*, June 28, 1979. Majority: Barton, Wren — 12 pages; dissent: McNaughton — 2 pages. (50)

Procedure; notice of discipline — notice period not mandatory. *Re Thibodeau-Finch Express Limited and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 938; Sokoloski grievance*. See (49), *supra*. (51)

Procedure; time limit on imposition of discipline — time running from date of event; objection not justified. *Re Hussman Store Equipment Limited and United Automobile Workers, Local 397; Misner grievance*, June 28, 1979. Rayner — 7 pages. (52)

Profanity; grievor used profane language against foreman — grievance dismissed. *Re Steel Company of Canada, Limited and United Steelworkers of America, Local 1005; Crump grievance*, June 26, 1979. Majority: Rayner, Baker — 8 pages; dissent: Sharp — 2 pages. (53)

Rudeness to management employee alleged — failure of communication; grievance allowed. *Re Wellesley Hospital and Ontario Nurses' Association; Fraser grievance*, June 22, 1979. Majority: Beck, Angus — 14 pages; dissent: Ibsen — 1 page. (54)

Sleeping on job — evidence insufficient; grievance allowed in part. *Re Lakehead University and Service Employees' Union, Local 268; Albert grievance*, July 16, 1979. Majority: Duchesneau-McLachlan, Hebert — 12 pages; partial dissent: Thornburg. (55)

Suspension because of loss of driver's licence — suspension non-disciplinary; grievance allowed in part. *Re Metropolitan Toronto, Municipality of and Canadian Union of Public Employees, Local 43; Bytautas grievance*, July 23, 1979. Majority: P.C. Picher, Perron — 18 pages; partial dissent: Tate — 5 pages. (56)

Unruly behaviour alleged — foreman over-reacting — grievance allowed. *Re Allied Chemical Canada Ltd. and United Automobile Workers, Local 89; Borland and Rocheleau grievances*, July 16, 1979. Kruger — 7 pages. (57)

Evidence

Extrinsic evidence — alleged ambiguity in agreement permitting admission of extrinsic evidence — extrinsic evidence allowed in part. *Re City of London, Corporation of and Canadian Union of Public Employees, Local 101; Edwards grievance*, July 18, 1979. Majority: H.D. Brown, Noble — 11 pages; dissent: Richardson — 3 pages. (58)

Extrinsic evidence; evidence of past practice to demonstrate union acquiescence to employer's position — preliminary objection sustained in part. *Re Phillips Cables Limited, Brockville Plant, and United Electrical Workers, Local 510; second interim award*, December 11, 1978. Majority: Swan, Millard — 26 pages; dissent: McIsaac — 2 pages. (59)

Expense Allowance

Mileage charged; grievor assigned to one office but temporarily assigned to main office — entitlement to mileage allowance equal to distance between offices; grievance allowed. *Re Lambton Health Unit and Ontario Nurses' Association; Perdeaux grievance*, June 29, 1979. Majority: H.D. Brown, Symes — 12 pages; dissent: Freedman — 2 pages. (60)

Grievance Procedure

Prior settlement alleged — no evidence of duress; grievances dismissed. *Re Hamilton-Wentworth, Regional Municipality of and Canadian Union of Public Employees; Parkin et al grievances*, June 29, 1979. Teplitsky — 4 pages. (61)

Grievance signed by steward rather than grievor — not a technicality; grievances dismissed. *Re Bell Canada and Communications Workers of Canada, Local 31; Richmond, Ottenhof, Gibson grievances*, July 6, 1979. Majority: Burkett, Switzman — 26 pages; partial dissent: Switzman — 2 pages; dissent: Healy — 2 pages. (62)

Settlement meeting — mandatory provision for meeting between management and union prior to arbitration; onus upon management to respond to union's request for a meeting — grievance arbitrable. *Re Genaire (1961) Limited and United Automobile Workers, Local 199; Burgio grievance*, July 25, 1979. Lunney — 14 pages. (63)

Holiday Pay

Collective agreement providing for pay when Brewers' Retail stores closed — whether grievors entitled to pay when closing day is not working day or statutory holiday — grievance dismissed. *Re Molson's Brewery (Ontario) Limited and Canadian Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers, Local 304; union grievance*, July 30, 1979. Weatherill — 7 pages. (64)

Hours of Work

Lunch break — whether employees working outside of classification entitled to paid lunch hour — grievance allowed in part. *Re Canadian SKF Limited and International Association of Machinists and Aerospace Workers, Local 78; union grievance*, June 18, 1979. Teplitsky, Wren, Murray — 5 pages. (65)

Illness

Entitlement to Christmas bonus — where disabled for entire year — grievances allowed. *Re Dominion Stores Ltd. and Retail, Wholesale and Department Store Union, Local 545; Penny and Perry grievances*, July 9, 1979. Majority: O'Shea, Lachance — 14 pages; dissent: O'Toole. (66)

Job Posting

Specificity of description — no obligation to post a specific position; grievance dismissed. *Re St. Catharines General Hospital and Service Employees Union, Local 204; policy grievance*, July 4, 1979. Majority: O'Shea, Dixon — 15 pages; dissent: Cooper — 1 page. (67)

Lay-Off

Bumping rights; upward bumping — collective agreement silent on matter; grievance dismissed. *Re Royal Victoria Hospital of Barrie and Service Employees Union, Local 204; Thompson grievance*, June 12, 1979. Majority: Brunner, Gilmore — 15 pages; dissent: Wren — 5 pages. (68)

Failure to give proper notice alleged — whether need for lay-off foreseeable — grievance allowed. *Re Consolidated Aviation Fueling of Toronto Limited and International Association of Machinists and Aerospace Workers, Local 2413; Hallyburton et al grievances*, July 18, 1979. O'Shea — 14 pages. (69)*

Qualifications — grievor unable to perform all work; grievance dismissed. *Re DeLaval Turbine Canada Ltd. and International Association of Bridge, Structural and Ornamental Iron Workers, Local 834; Parry grievance*, July 11, 1979. Haladner — 12 pages. (70)

Qualifications — whether grievor qualified to do work — grievance dismissed. *Re Canadian Car Division Hawker Siddeley Canada Ltd. and United Automobile Workers, Local 1075; Murphy grievance*, April 30, 1979. Duchesneau-McLachlan — 16 pages. (71)

Reduction from full to part-time — whether constitutes lay-off; effect of management rights clause — grievance dismissed. *Re Peel Board of Education and Canadian Union of Public Employees, Local 1628; Molyneaux grievance*, July 7, 1979. Majority: Kennedy, Houck — 11 pages; dissent: Griffin. (72)*

Volume of work insufficient to justify retaining grievor; remaining work given to non-bargaining unit employees — grievance dismissed. *Re Canada Building Materials Company and Teamsters, Local 230; MacKinnon grievance*, June 18, 1979. Rayner, Thomson, Wakely — 6 pages. (73)

Leave of Absence

Leave for urgent personal or essential business — employer having right to demand explanation when leave requested; grievance dismissed. *Re Stormont, Dundas and Glengarry County Board of Education and Ontario Secondary School Teachers' Federation, District 21, and L'Association des Enseignants Franco-Ontariens Unite Regionale, Section Secondaire Numero 3; Higgins grievance*, June 20, 1979. Dunn, Knott, Comrie — 4 pages. (74)

Management Rights

Duty of fairness — language of collective agreement not imposing such duty. *Re Metropolitan Toronto, Municipality of and Canadian Union of Public Employees, Local 43; Bytautas grievance*. See (56), *supra*. (75)*

Quality of work — grievor seeking compensation for increased work load resulting from maintaining standard higher than required by employer — grievance dismissed. *Re Governing Council of the University of Toronto and Graduate Assistants' Association, Local 2; Walker grievance*, June 27, 1979. Majority: Egan, Cook — 13 pages; dissent: Nelson — 6 pages. (76)

Overtime

Distribution to be "as equal as practicable" — grievance allowed. *Re American Can of Canada Limited and Can Workers Federal Union of the Canadian Labour Congress; Roberts grievance*, July 10, 1979. Majority: H.D. Brown, Shea — 16 pages; dissent: Archer — 1 page. (77)

Equalization — collective agreement requiring employer to equalize overtime opportunities — alleged that grievor had refused overtime but no record of such; grievance allowed. *Re Standard Tube Canada Limited and United Automobile Workers, Local 636; Willms grievance*, July 11, 1979. H.D. Brown — 11 pages. (78)

Equalization — collective agreement requiring employer to equalize overtime opportunities — equalization to occur at end of calendar year; grievance dismissed. *Re Standard Tube Canada Limited and United Automobile Workers, Local 636; Ridell grievance*, July 11, 1979. H.D. Brown — 11 pages. (79)

Non-bargaining unit employee briefly performing grievor's job while bargaining unit employees on holiday — whether company required to call in grievor — grievance allowed. *Re DeLaval Turbine Canada Ltd. and International Association of Bridge, Structural and Ornamental Iron Workers, Local 834; Gilbert grievance*, July 20, 1979. Linden — 5 pages. (80)

Improper assignment alleged: regular operator entitled to first refusal of overtime work wherever practical — grievance allowed. *Re Sunbeam Corporation (Canada) Ltd. and Federal Labour Union #24762; Motez grievance*, July 27, 1979. Majority: Beatty, Simon — 7 pages; dissent: Heather — 2 pages. (81)

Part-time Employees

Relevant past experience — all grievances but one dismissed. *Re Trenton Memorial Hospital and Ontario Nurses' Association; Hennessey, Lafontaine et al grievances*, June 19, 1979. Majority: Teplitsky, Symes — 5 pages; partial dissent: Gray — 4 pages. (82)

Premium Pay

Premium normally paid for Sunday work — whether grievor entitled to premium when Sunday designated for observance of paid holiday — grievance dismissed. *Re Canada Bread Division of Corporate Foods Limited and Milk and Bread Drivers, Dairy Employees, Catering and Allied Employees, Local 647; Pickering grievance*, July 17, 1979. Majority: Brandt, Filion — 12 pages; dissent: Thomson. (83)*

Shift premium to be paid for each full and completed afternoon and night shift — new shift scheduled for 11:30 a.m. to 8:00 p.m. — premium pay required; grievance allowed. *Re Northwestern General Hospital and Service Employees' Union, Local 204; policy grievance*, June 28, 1979. Majority: Brandt, Acton — 9 pages; dissent: Filion — 2 pages. (84)*

Procedure

Production of documents — order for production not appropriate in circumstances. *Re Goodyear Canada Inc., New Toronto Factory and Central Distributing Warehouse, and United Rubber, Cork, Linoleum and Plastic Workers of America, Local 232; union grievance*, July 11, 1979. Beck, Tate, Filion — 5 pages; addendum: Tate — 1 page. (85)

Promotion

Conditional promotion — individual agreement contrary to collective agreement — grievance allowed. *Re Hydro Electric Commission of the City of Hamilton and International Brotherhood of Electrical Workers, Local 138; Coates grievance*, June 29, 1979. Majority: Beck, Walsh — 10 pages; partial dissent: Gregory — 3 pages. (86)*

Denial of job based on grievor's poor attendance record, for which discipline previously imposed — whether attendance properly taken into consideration — grievance dismissed. *Re Dominion Stores Ltd. and United Steelworkers of America; Fauteux grievance*, July 12, 1979. Rayner — 6 pages. (87)

Qualifications — fair consideration given; grievance dismissed. *Re Soo and District of Algoma Credit Union Limited and Office and Professional Employees International Union, Local 214; Zuccato grievance*, July 6, 1979. Majority: Lunney, Bernardi — 6 pages; dissent: Dungey. (88)

Qualifications; fluency in both official languages — job posting required candidates only to be bilingual; grievance allowed in part. *Re Ottawa General Hospital and Ontario Nurses' Association; Fortin grievance*, July 4, 1979. Brent, Done, Sirois — 9 pages. (89)*

Qualifications — grievor not having access to procedures manual for job in question; grievance allowed in part. *Re Peterborough Utilities Commission and International Brotherhood of Electrical Workers, Local 1964; Collins grievance*, July 10, 1979. Majority: Baum, Nokes — 10 pages; dissent: Metcalfe — 3 pages. (90)

Qualifications; outside candidate chosen over inside employee — grievance dismissed. *Re Scarborough General Hospital and Canadian Union of Public Employees, Local 1487; Foden grievance*, July 3, 1979. Majority: Swan, Sargeant — 16 pages; dissent: Riseley — 2 pages. (91)*

Qualifications; seniority to govern only where qualifications are equal — grievance dismissed. *Re Sunar Division of Hausermann Limited and United Steelworkers of America, Local 7651; Schultz grievance*, July 9, 1979. O'Shea — 12 pages. (92)

Selection to be based on "seniority, skill, experience, related experience and ability to perform the work" — grievance of more senior employee allowed. *Re Brass Craft Canada, Ltd. and International Association of Machinists and Aerospace Workers, Local 2446; Stafford grievance*, July 16, 1979. Majority: O'Connor, Wren — 8 pages; dissent: Farrar — 2 pages. (93)

Rectification

Agreement clear — rectification not appropriate. *Re Ottawa Board of Education and Ontario Secondary School Teachers' Federation, District 26 and L'Association des Enseignants Franco-Ontariens, Unite Regional 1; policy grievance*, July 7, 1979. Majority: Swan, Knoff — 41 pages; dissent: Laishley — 11 pages. (94)

Reporting Pay

Notification of plant closure — employer unable to rely on past practice of radio announcement due to power failure; grievances allowed. *Re Cleaver-Brooks of Canada Limited and United Steelworkers of America, Local 7257; Matheson, Matheson, Hislop grievances*, July 23, 1979. Brandt — 9 pages. (95)

Refusal to work because of weather conditions — worksite not unsafe; grievances dismissed. *Re E.B. Eddy Forest Products Ltd. and Lumber and Sawmill Workers' Union, Local 2693; group grievances*, May 24, 1979. Majority: Brunner, Werry — 15 pages; dissent: Wren — 1 page. (96)

Sick Pay

Entitlement; grievor claiming sick pay while on vacation — grievance dismissed. *Re Phillips Cables Limited and United Steelworkers of America, Local 7276; Siracusa grievance*, July 16, 1979. O'Shea — 13 pages. (97)

Medical certificate — whether employer entitled to require medical certificate when short absences — grievances allowed. *Re Le Droit Ltee and L'Union Typographique d'Ottawa, Local 102; Blais et al grievances*, July 9, 1979. Weatherill — 10 pages. (98)

Sub-Contracting

Restriction on the sub-contracting of work by construction industry employer — provision restricting sub-contracting to contractors in a bargaining relationship with particular council of trade unions not invalid. *Re Board of Education for the City of Toronto and Toronto Building and Construction Trades Council*, June 19, 1979. Swan — 27 pages. (99)

Temporary Employees

Premium in lieu of definition — seniority not determining factor; grievance dismissed. *Re National Harbours Board and United Steelworkers of America, Local 948; Martine grievance*, July 13, 1979. Kruger, Sharp, Baldwin — 6 pages. (100)

Transfer

Failure to activate transfer requests — whether vacancies permanent — grievance allowed. *Re Air Canada and Canadian Air Line Employees' Association; policy grievance*, July 3, 1979. Rayner — 7 pages. (101)

Potential violation of letter of intent alleged — grievance dismissed. *Re BASF Canada Ltd. and Canadian Paperworkers Union, Local 775; Glende grievance*, June 27, 1979. Curtis, Quaife, Mills — 4 pages. (102)

Union Officials

Entitlement to pay while negotiating or processing grievances — whether attendance at general business meeting is within scope of collective agreement provisions — grievance dismissed. *Re Borough of York, Corporation of and Canadian Union of Public Employees, Local 10, union grievance*, July 23, 1979. Springate, Fagan, Paulin — 10 pages; addenda: Fagan, Paulin — 1 page. (103)

Vacation Pay

Payment; standardization of vacation payments — employees receiving entitlements on same day each year — grievance dismissed. *Re Hayes-Dana Limited and United Automobile Workers, Local 676; policy grievance*, July 18, 1979. O'Shea — 14 pages. (104)

Wages

Failure to pay amounts stipulated in agreement — grievances allowed. *Re Perfect Metro Cleaners and Labourers' International Union of North America, Local 183; Ludlow et al grievances*, July 18, 1979. Brunner — 6 pages. (105)

Incentive pay — adjustment of rate proper; grievance dismissed. *Re Phillips Cables Limited, Brockville Plant, and International Union of Electrical, Radio and Machine Workers of America, Local 510; union grievance*, July 10, 1979. Majority: Swan, McIsaac — 10 pages; dissent: Millard. (106)

Retroactivity — whether grievors "on the payroll" at time of A.I.B. award — grievances allowed. *Re Bell Canada and Communications Workers of Canada*. See (62) *supra*. (107)

Salary grid — service with hospital meaning service in categories listed; grievance dismissed. *Re Huronia District Hospital (Midland) and Ontario Nurses' Association; Best grievance*, June 12, 1979. Majority: Beck, Winkler — 18 pages; did not concur: Grant. (108)

Welfare Plans

Dental Plan — whether benefits based on 1974 or 1977 fee schedule — grievance dismissed. *Re Bundy of Canada Limited and United Automobile Workers, Local 1285; policy grievance*, July 20, 1979. Brandt — 9 pages. (109)

Employer remittances to industry plans — requirement of monthly payments; grievance allowed. *Re Party Time Fashions Limited and International Ladies' Garment Workers Union; union grievance*, June 25, 1979. Arthurs — 7 pages. (110)

Failure to provide sickness and accident benefits plan — employer liable to pay benefits; grievance allowed. *Re Windsor Tube and Metal Inc. and United Automobile Workers, Local 195; Zakaria grievance*, July 4, 1979. Gorsky — 6 pages. (111)

Former carrier insuring grievor's "common law" spouse — new carrier refusing — not "equivalent" coverage; grievance allowed. *Re Central Stampings Limited and United Automobile Workers, Local 195; Campagne grievance*, July 23, 1979. Weatherill — 11 pages. (112)

Suspended employee — entitled to apply for long term disability benefits; grievance allowed. *Re University Hospital and London and District Service Workers' Union, Local 220; McConnell grievance*, July 6, 1979. Palmer, Murray, Switzman — 9 pages. (113)

Work Assignment

Work normally performed by grievor assigned to employee in different classification — whether job exclusively within grievor's classification — grievance dismissed. *Re Ex-Cell-O Corporation of Canada Ltd. and International Molders and Allied Workers Union, Local 49; Grave grievance*, July 5, 1979. Rayner — 8 pages. (114)

The following awards in interest arbitrations under *The Hospital Labour Disputes Arbitration Act* were also filed with the Ontario Labour-Management Arbitration Commission during the month of July, 1979.

City of Chatham, Corporation of, and Canadian Union of Public Employees, Local 12 — Victoria Home, Teplitsky — 6 pages.

John Noble Home for the Aged, Brantford, and Ontario Nurses' Association, Brunner — 36 pages; partial dissent: Paliare — 1 page; partial dissent: Baker — 2 pages.

Joseph Brant Memorial Hospital, and International Union of Operating Engineers, Local 772, (Interim award), O'Shea — 10 pages.

Kennedy Lodge Nursing Home, and Ontario Nurses' Association, H.D. Brown — 16 pages; partial dissent: Wakely — 2 pages.

City of Kingston, Corporation of (Rideaucrest Home for the Aged), and Ontario Nurses' Association, Brent — 10 pages.

Leisure World Nursing Homes Limited, and Service Employees Union, Local 204, Brent — 9 pages.

The 14 Participating Hospitals, and London and District Service Workers' Union, Local 220, Adams — 41 pages; memorandum of settlement — 17 pages; partial dissent: Switzman — 8 pages; partial dissent: Filion — 3 pages.

Rest Haven Private Hospital, and Ontario Nurses' Association, (Notice of Settlement), McCulloch — 14 pages.

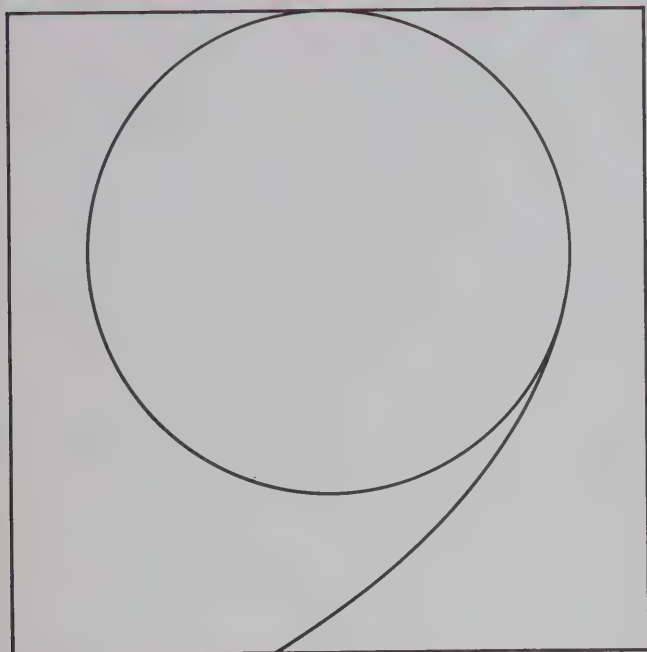
Sunbeam Home, and London & District Service Workers' Union, Local 220, H.D. Brown — 24 pages.

Sydenham District Hospital, and Ontario Nurses' Association, Swan — 29 pages; dissent: Belford — 1 page.

Toronto General Hospital, and Ontario Nurses' Association, Swan — 46 pages; dissent: Belford — 2 pages.

Waterloo, Regional Municipality of (Sunnyside Home), and Ontario Nurses' Association, Rubenstein — 25 pages; dissent: Noble.

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Awards

The following awards were filed with the *Ontario Labour-Management Arbitration Commission* during the month of August, 1979, under Section 6(2) of Ontario Regulation 635, R.R.O. 1970.

The summary was prepared at the Faculty of Law, Queen's University, under the supervision of C.G. Simmons, B.A., B.C.L., LL.M., and D.D. Carter, B.A., B.C.L., LL.B.

*Indicates award to be reported in full or in part in *Labour Arbitration Cases*.

Arbitrability

Disciplinary termination of probationary teacher prior to expiration of contract: conflict between collective agreement and statutory contract — grievance arbitrable. *Re Board of Education for the Borough of Scarborough and Ontario Secondary School Teachers' Federation; Woznica grievance*, August 23, 1979. Majority: P.C. Picher, Goudge — 17 pages; dissent: Gordon. (1)

Policy grievance raising matter of individual nature — grievance not arbitrable. *Re Victoria Hospital Corporation and Ontario Nurses' Association; policy grievance*, July 23, 1979. Majority: H.D. Brown, Churchill-Smith — 13 pages; dissent: Switzman — 3 pages. (2)

Probationary employee — no restrictions on access to grievance procedure; discharge grievance arbitrable. *Re Sandwich, Windsor & Amherstburg Railway Company and Amalgamated Transit Union, Local 616; Silk grievance*, August 13, 1979. R.J. Roberts, Eaton, Evans — 4 pages. (3)

Sale of business after expiration of collective agreement — no obligation upon new owner to employ employees of former owner — grievance dismissed. *Re 380611 Ontario Limited and International Beverage Dispensers' and Bartenders' Union of Hotel and Restaurant and Employees' and Bartenders' International Union, Local 280; Mathews et al grievances*, August 1, 1979. Majority: Adams, MacDermid — 18 pages; dissent: Fagan — 11 pages. (4)*

Bargaining Unit

Inspection tests transferred to non-bargaining unit employee — amount of work transferred in issue — grievance dismissed. *Re American Motors (Canada) Limited and United Automobile Workers, Local 1285; Carr grievance*, July 13, 1979. Ord — 10 pages. (5)

Work performed by supervisor — unusual circumstances — grievance dismissed. *Re Air Canada and Canadian Air Line Employees' Association; union grievance*, August 21, 1979. Burkett — 10 pages. (6)

Classification

Job description review; management and union consultations to update job descriptions — alleged breach of collective agreement by virtue of impasse in negotiations — grievance dismissed. *Re Ferranti-Packard Limited and United Steelworkers of America, Local 5788; union grievance*, July 17, 1979. Palmer, Bernardo, Teal — 9 pages. (7)

Temporary transfer; grievors temporarily assigned to higher classification — alleged entitlement to higher compensation; grievance allowed in part. *Re Town of Midland, Corporation of and Ontario Public Service Employees Union, Local 328; group grievance*, August 23, 1979. Burkett, Kearney, Haig — 18 pages. (8)

Contracting Out

Bona fides of contracting out questioned — evidence of sound business reasons; grievance dismissed. *Re Skyline Hotels Limited and Hotels, Clubs, Restaurants, Tavern Employees Union, Local 261; group and union grievances*, August 3, 1979. Majority: Weatherill, Healy — 7 pages; dissent: Bishop. (9)

Cost of Living Allowance

Calculation; adjustment made per each percentage increase in cost of living — issue of inclusion or accumulation of fractional increases — grievance dismissed. *Re Fortune Footwear Limited and United Textile Workers of America, Local 369; union grievance*, August 9, 1979. Majority: Hinnegan, Mitchnik — 5 pages; dissent: Bosnich. (10)

Demotion

Involvement in traffic accident; whether sufficient to undermine ability to perform work; lesser discipline substituted. *Re City of Toronto, Corporation of and Toronto Civic Employees Union, Local 43, Canadian Union of Public Employees; Tropea grievance*, August 20, 1979. Majority: P.C. Picher, Tate — 10 pages; dissent: Paulin — 5 pages. (11)

Discharge

Absence from work because of criminal conviction — grievance dismissed. *Re Hamilton Street Railway Company and Amalgamated Transit Union, Local 107; Tobin grievance*, August 20, 1979. Majority: Hinnegan, Mitchnik — 9 pages; dissent: Bosnich — 3 pages. (12)*

Absenteeism — failure to provide explanation or medical certificate; grievance dismissed. *Re Abex Industries Ltd. and United Steelworkers of America; Morgan grievance*, August 16, 1979. O'Shea — 14 pages. (13)

Absenteeism — grievor unable to meet reasonable expectations of availability for work; grievance dismissed. *Re University of Windsor and Canadian Union of Public Employees, Local 1001; Boughner grievance*, August 10, 1979. Samuels — 8 pages. (14)

Absenteeism because of injury — grievance dismissed. *Re Dainty Foods Limited and Brewery Workers, Local 278; Fournier grievance*, August 23, 1979. Perkins — 4 pages. (15)

Absenteeism resulting from illness — termination justified; grievance dismissed. *Re Northern Telecom Canada Limited and Communications Workers of Canada; Nicolson grievance*, July 30, 1979. Beck — 21 pages. (16)

Alcoholism — grievor reporting to work intoxicated; efforts on the part of employer and grievor to resolve problem considered; alcoholism as a sickness in issue; grievance dismissed. *Re Labatt's Limited and International Brewery Workers Union, Local 304; Gillham grievance*, August 3, 1979. Weatherill — 11 pages. (17)

Assault — grievor physically assaulting fellow employee — self-defence and provocation alleged; grievance allowed. *Re National Auto Radiator Manufacturing Company Limited and United Automobile Workers, Local 195; Stevenson grievance*, August 24, 1979. Kruger — 7 pages. (18)

Assault on supervisor: grievor allegedly suffering psychiatric disorder at time of incident — grievance dismissed. *Re Molson's Brewery (Ontario) Limited and Canadian Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers, Local 306; Malenfant grievance*, August 2, 1979. Palmer — 14 pages. (19)

Disruptive behaviour — grievance dismissed. *Re Baycrest Hospital and/or Jewish Home for the Aged and Service Employees Union, Local 204; Tsamos grievance*, July 30, 1979. Beck, Wren, Phelps — 28 pages. (20)

Extensive absences over several years because of illness — improvement not likely; grievance dismissed. *Re National Auto Radiator Manufacturing Company Limited and United Automobile Workers, Local 195; Tucker grievance*, July 31, 1979. Palmer — 10 pages. (21)

Falsification of application for employment alleged — reinstated without compensation. *Re Cooper Tool Group Limited and United Steelworkers of America, Local 6497; McHolm grievance*, August 28, 1979. Hinnegan — 8 pages. (22)

Impaired driving: accident involving company vehicles, resulting in substantial damage — grievances dismissed. *Re Brewers Warehousing Company Limited and United Brewers' Warehousing Workers' Provincial Board; King and Bowles grievances*, August 10, 1979. Brunner — 18 pages. (23)

Inability to perform work because of work-related injury — grievance dismissed. *Re Canadian Lukens Limited and United Steelworkers of America; Mabilia grievance*, August 13, 1979. O'Shea — 18 pages. (24)

Incompetence at present job — grievor probably able to perform other work; grievor reinstated on trial basis. *Re Affiliated Medical Products Limited and Amalgamated Clothing and Textile Workers Union, Local 1775; Barchuk grievance*, August 8, 1979. Teplitsky — 3 pages. (25)

Insubordination; disruption of work place and abuse of superior; grievance dismissed. *Re Neon Products Limited, Eastern Division, and International Brotherhood of Painters and Allied Trades, Local 1630; Marland grievance*, August 23, 1979. Majority: O'Shea, Borden — 12 pages; dissent: Banack — 8 pages. (26)

Leaving place of work without permission or reasonable explanation: inconsistent application of rule alleged — grievance dismissed. *Re Cambrian Broadcasting Limited and National Association of Broadcast Employees and Technicians; St. Louis grievance*, July 30, 1979. Brunner — 11 pages. (27)

Loss of seniority because grievor failing to notify employer or justify absence from work — grievor not reverting to probationary status; grievance allowed in part. *Re Indalloy Division of Indal Limited and United Steelworkers of America, Local 2729; Last grievance*, August 8, 1979. Kennedy — 13 pages. (28)

Marijuana — grievor allegedly smoking marijuana during working hours — not substantiated; grievance allowed. *Re International Harvester Company of Canada Limited and United Automobile Workers, Local 127; Guilbault grievance*, July 31, 1979. Palmer — 6 pages. (29)

Negligence — grievor's record considered; suspension substituted. *Re Transport Division of Corporate Foods Limited and Milk and Bread Drivers, Dairy Employees, Caterers and Allied Employees, Local 647; Yurkiw grievance*, August 16, 1979. Majority: Springate, Teichmann — 10 pages; dissent: Winkler — 3 pages. (30)

Physical injury; injury not impairing grievor's ability to perform work; grievance allowed. *Re Shell Canada Limited and Oil, Chemical and Atomic Workers Union, Local 9-848; Peripoli grievance*, August 27, 1979. Majority: Hinnegan, Rogers — 8 pages; dissent: Churchill-Smith — 3 pages. (31)

Redundancy — termination effected in accordance with collective agreement; grievance dismissed. *Re Atikokan Board of Education and Ontario Secondary School Teachers' Federation, Atikokan Division; Royce grievance*, August 21, 1979. Majority: Kennedy, Angus — 17 pages; dissent: Cazabon. (32)

Term appointment: whether such fixed term is valid under statutory provisions — grievance allowed. *Re Ontario Secondary School Teachers Federation and Wellington County Board of Education; Winter grievance*, August 3, 1979. Majority: Teplitsky, Posen — 6 pages; dissent: Stewart — 4 pages. (33)

Theft alleged: grievor found in possession of scrap not authorized for removal — grievor denying knowledge of possession; grievance allowed. *Re Goodyear Canada Inc. and United Rubber, Cork, Linoleum and Plastic Workers of America, Local 189; Goode grievance*, August 27, 1979. Kennedy — 12 pages. (34)

Theft of company property — grievance dismissed. *Re Dominion Stores Limited and Retail, Wholesale and Department Store Union, Local 414; Garrett grievance*, August 18, 1979. Majority: H.D. Brown, White — 22 pages; dissent: Dahmer — 3 pages. (35)

Threats and abusive language addressed to foreman — lesser penalty substituted. *Re Allatt Limited and International Woodworkers of America; Francescut grievance*, July 27, 1979. Brunner, Marcantonio, Mitchnick — 4 pages. (36)

Discipline

Absence from work station — suspensions reduced. *Re Saskatchewan Wheat Pool and Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees, Grain Elevator Division, Local 650; Johnston, Vercillo grievances*, August 24, 1979. Bicknell, Stencer, Hebert — 12 pages. (37)

Altercation with member of public — inoffensive physical contact by grievor; lesser penalty substituted. *Re Guelph Transportation Commission and Amalgamated Transit Union, Local 1189; Keleher grievance*, August 28, 1979. Majority: Brandt, Austin — 9 pages; dissent: Smart — 2 pages. (38)

Assault on foreman alleged — grievance allowed in part. *Re Sasco Tubes and United Steelworkers of America; Accurso grievance*, July 18, 1979. Teplitsky — 4 pages. (39)

Falsification of work records — lesser penalty substituted. *Re Lever Detergents Limited and International Chemical Workers' Union, Local 32; Sutherland grievance*, August 3, 1979. Majority: Weatherill, Phillips — 10 pages; partial dissent: Dinsdale. (40)*

Insubordination: 5 day suspension not excessive; grievance dismissed. *Re Dominion Chain Company and International Association of Machinists and Aerospace Workers; Petrie grievance*, July 18, 1979. Majority: Teplitsky, Nightingale — 5 pages; dissent: Jardine. (41)

Insubordination — grievor failing to respond to request to meet with supervisor to discuss vacations — order transmitted second hand; grievance allowed. *Re Saskatchewan Wheat Pool and Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees, Grain Elevator Division, Local 650; Stefanyshyn grievance*, August 24, 1979. Majority: Bicknell, Stencer — 11 pages; dissent: Hebert — 1 page. (42)

Insubordination — grievors refusing to carry out direct order — grievances dismissed. *Re Sheraton Limited (The Sheraton Centre) Toronto and Hotel and Restaurant Employees and Bartenders International Union, Local 299; Pereira et al grievances*, July 31, 1979. Majority: Brunner, MacDermid — 10 pages; partial dissent: Tate — 2 pages. (43)

Insubordination; grievor refusing to follow a management directive — alleged reasonable belief in breach of collective agreement to justify conduct; grievance dismissed. *Re E.B. Eddy Forest Products Limited and Lumber and Sawmill Workers' Union, Local 2693; St. George grievance*, August 9, 1979. Majority: Hinnegan, McNaughton — 6 pages; dissent: Wren — 2 pages. (44)

Insubordination; grievor suspended for failing to follow supervisor's direct order to comply with plant rules — written warning substituted. *Re Long Manufacturing Division, Borg-Warner Canada Limited and International Association of Machinists and Aerospace Workers, Local 2330; Burke grievance*, August 23, 1979. H.D. Brown, Jardine, Boehmer — 12 pages. (45)

Intoxication while on duty — impairment not clearly established; grievance allowed in part. *Re Rockwell International of Canada Limited and United Automobile Workers, Local 1067; Fiedler grievance*, August 24, 1979. Ellis — 15 pages. (46)*

Negligence — grievor damaging company emergency vehicle; alleged unavoidable accident; suspension lessened. *Re Public Utilities Commission of the Borough of Scarborough and International Brotherhood of Electrical Workers, Local 636; Matthies grievance*, July 31, 1979. Majority: Burkett — 11 pages; dissent: Heslinga — 2 pages; dissent: Clawson — 2 pages. (47)

Unauthorized personal blood tests performed — grievance dismissed. *Re Ottawa General Hospital and Ontario Nurses' Association; Tremblay and Joly grievances*, August 10, 1979. M.G. Picher — 14 pages. (48)

Vehicular collision; minor damage — grievor's record "not bad"; lesser penalty substituted. *Re Consolidated Aviation Fueling of Toronto Limited and International Association of Machinists and Aerospace Workers, Local 2413; Clark grievance*, August 20, 1979. Brent — 12 pages. (49)

Holidays

Rotating shift; entitlement to reduced work week alleged — grievance dismissed. *Re Metropolitan Toronto, Municipality of and Canadian Union of Public Employees, Local 43; Bateman grievance*, August 27, 1979. Majority: P.C. Picher, Perron — 12 pages; did not concur: Tate. (50)*

Holiday Pay

Calculation; regular hourly wage — 10 per cent in lieu of fringe benefits to be included; grievance allowed. *Re North York General Hospital and Ontario Nurses' Association, Local 6; policy grievance*, July 12, 1979. Majority: Brunner, Angus — 16 pages; dissent: Macdougall — 2 pages. (51)

Holiday following on day when no work scheduled — grievance dismissed. *Re Stormont, Dundas & Glengarry County Board of Education and Canadian Union of Public Employees, Local 782; union grievance*, June 19, 1979. Majority: Dunn, Comrie — 3 pages; did not concur: Booth. (52)

Hours of Work

Change in shift schedule: grievor entitled to paid lunch hour; grievance allowed. *Re GTE Automatic Electric (Canada) Limited and International Union of Electrical, Radio and Machine Workers, Local 526; Vail grievance*, August 28, 1979. Majority: Kennedy, Herman — 9 pages; dissent: Billings. (53)

Illness

Heart problems alleged — grievor placed on sick leave — whether denial of work justified; grievance allowed. *Re Metropolitan Toronto, Municipality of and Canadian Union of Public Employees, Toronto Civic Employees' Union, Local 43; Stapley grievance*, August 3, 1979. Majority: Weatherill, Tate — 18 pages; dissent: Murray — 6 pages. (54)

Job Posting

Educational requirement of post-graduate degree — requirement unreasonable; grievance allowed. *Re Family and Children Services of the Niagara Region and Association of the Family and Children Services of the Niagara Region; policy grievance*, August 28, 1979. Majority: Brandt, Cooper — 32 pages; dissent: Cameron. (55)

Interviews; employer screening applicants for interviews on the basis of personnel files — alleged arbitrariness — grievance dismissed. *Re Board of Education of the City of Windsor and Canadian Union of Public Employees, Local 27; Thorpe grievance*, July 27, 1979. Majority: Kruger, Bartlet — 10 pages; dissent: Hogan. (56)

Vacant teaching positions to be posted — principal's job included in posting requirement; grievance allowed. *Re Temiskaming Board of Education and Federation of Women Teachers' Association of Ontario; union grievance*, August 21, 1979. Prichard — 28 pages. (57)

Written tests; employer initiating tests in job posting procedures; grievance dismissed. *Re Fabricon Manufacturing Limited and United Electrical, Radio and Machine Workers of America, Local 554; Dunk grievance*, August 3, 1979. Majority: O'Connor, Ashby — 9 pages; dissent: Russell — 2 pages. (58)

Job Vacancy

Existence of vacancy — previous incumbents only temporarily transferred; grievance dismissed. *Re Storwal International Incorporated and United Steelworkers of America, Local 3257; Grubich grievance*, August 23, 1979. Majority: O'Shea, O'Byrne — 19 pages; dissent: Taylor. (59)

Lay-Off

Grievor sent home early because of lack of work — junior employee retained; grievance allowed. *Re Dominion Stores Limited and Retail, Wholesale and Department Store Union, Local 545; Ridenour grievance*, August 22, 1979. Majority: O'Shea, Lachance — 11 pages; dissent: Churchmuch — 4 pages. (60)

Lay-off in effect for duration of stock-taking — competition date thereof disputed; grievance allowed. *Re Certified Brakes and United Steelworkers of America, Local 14831; Farrugia and Cece grievances*, August 28, 1979. Baum — 6 pages. (61)

Management Rights

Rule against employing relatives in same department — rule unreasonable; grievance allowed. *Re Ottawa Civic Hospital and Canadian Union of Public Employees, Local 576; Milk grievance*, August 2, 1979. Majority: McCaughey, Henry — 10 pages; dissent: Lapointe — 2 pages. (62)*

Maternity Leave

No express application for leave — lack of communication: reinstatement without compensation. *Re Metropolitan Garage Doors Limited and United Steelworkers of America, Local 2729; Salvucci grievance*, August 30, 1979. Linden — 9 pages. (63)

Pensions

Credited service; formula for crediting years of continuous service with employer to determine eligibility — issue of crediting other employment service toward quantum of benefit and/or eligibility — grievance dismissed. *Re Canadian Fabricated Products Limited and United Automobile Workers of America, Local 1325; policy grievance*, August 3, 1979. Weatherill — 8 pages. (64)

Premium Pay

Shift differential — payable in addition to premium pay for holiday work but not payable where day-off in lieu of holiday. *Re City of Timmins Home for the Aged (Golden Manor) and Canadian Union of Public Employees, Local 1140; Woodrow grievance*, August 13, 1979. Dunn, Gelinas, Noble — 3 pages. (65)

Probationary Employees

Discharge — availability of grievance procedure; absence of express prohibitions; grievance arbitrable. *Re Sandwich, Windsor & Amherstburg Railway Company and Amalgamated Transit Union, Local 616; Silk grievance*, August 13, 1979. R.J. Roberts, Eaton, Evans — 4 pages. (66)

Promotion

Line of progression established — seniority governing factor; grievance allowed. *Re Ivaco Rolling Mills, A Division of Industrial Fasteners Limited and United Steelworkers of America, Local 7940; Belanger grievance*, August 23, 1979. Abbott — 16 pages. (67)

Qualifications — grievors of relatively equal skill and ability; grievances allowed. *Re Cryovac Division, Grace Chemicals Limited and Canadian Union of Operating Engineers, Local 101; Kruger, Bailey grievances*, August 3, 1979. Majority: Weatherill, Lang — 10 pages; did not concur: Werry. (68)

Qualifications — issue of leadership ability for a lead-hand position — grievance dismissed. *Re Borough of York, Corporation of and Civic Employees Union, Local 10; Baldassini grievance*, August 8, 1979. Majority: M.G. Picher, Osler — 7 pages; dissent: Fagan — 1 page. (69)

Qualifications; supervisory position — scope of arbitral review restricted; grievance dismissed. *Re Ontario Hydro and Ontario Hydro Employees' Union, Local 1000; Morin grievance*, August 7, 1979. Majority: McCamus, Chatland — 26 pages; dissent: Goudge — 2 pages. (70)*

Scheduling of Work

Notice of change; employer required to give 24 hour notice of change of work schedule — notice given 24 hours prior to commencement of new schedule; grievance dismissed. *Re Spruce Falls Power and Paper Company Limited and Canadian Paperworkers National Union, Local 89; union grievance*, August 24, 1979. Majority: O'Shea, Noonan — 9 pages; dissent: Stencer — 3 pages. (71)*

Shift preference; seniority to govern except where necessary to train new employees — necessity of rescheduling in issue — grievance allowed. *Re Abex Industries Limited and United Steelworkers of America; Hutchinson grievance*, July 31, 1979. Palmer — 7 pages. (72)

Severance Pay

Lay-off for protracted period resulting in expiration of seniority rights — termination because of closing part of plant; grievance allowed. *Re Uniroyal Limited and United Rubber, Cork, Linoleum and Plastic Workers of America, Local 67; union grievance*, July 31, 1979. Majority: Weatherill, Bruder — 12 pages; dissent: Hill — 1 page. (73)*

Sick Leave

Lay-off while on sick leave — insurance premiums and statutory holiday pay claimed; grievance allowed. *Re Herb Fraser & Associates Limited and United Steelworkers of America, Local 7022; Essex grievance*, August 29, 1979. Majority: O'Shea, Sharp — 14 pages; dissent: Cameron. (74)*

Provision for cashing in unused sick leave upon termination — effect of change in benefit plan considered; grievance allowed in part. *Re Sudbury General Hospital of the Immaculate Heart of Mary and Ontario Nurses' Association; policy grievance*, July 23, 1979. Beck, Carscallen, Butler — 12 pages. (75)

Union Officials

Entitlement to pay for time spent at negotiations and preparatory meetings — no entitlement for single party meetings. *Re Computing Devices Company, Division of Control Data Canada Limited and Salaried Employees Alliance of Canada; company grievance*, July 26, 1979. Fraser, Posen, Bowman — 17 pages. (76)

Wages

Wage scales — new employee hired at maximum rate permitted by collective agreement — alleged breach of implied progression requirements; alleged infringement of bargaining unit rights; grievance allowed in part. *Re Lambton County Board of Education and Ontario Public School Men Teachers' Federation and Federation of Women Teachers' Association of Ontario; union grievance*, July 31, 1979. Majority: Hinnegan, Knott — 15 pages; dissent: Riddell — 4 pages. (77)

The following awards in interest arbitrations under *The Hospital Labour Disputes Arbitration Act* were also filed with the *Ontario Labour-Management Arbitration Commission* during the month of August, 1979.

Humber Memorial Hospital Association and Canadian Union of Public Employees, Local 1080 (clerical employees), Davidson, Simon — 25 pages; dissent: Billings — 1 page.

North Bay Civic Hospital and Canadian Union of Public Employees, Local 139 (full-time and part-time employees), Adams — 18 pages; partial dissent: Stewart — 1 page; partial dissent: Switzman — 1 page.

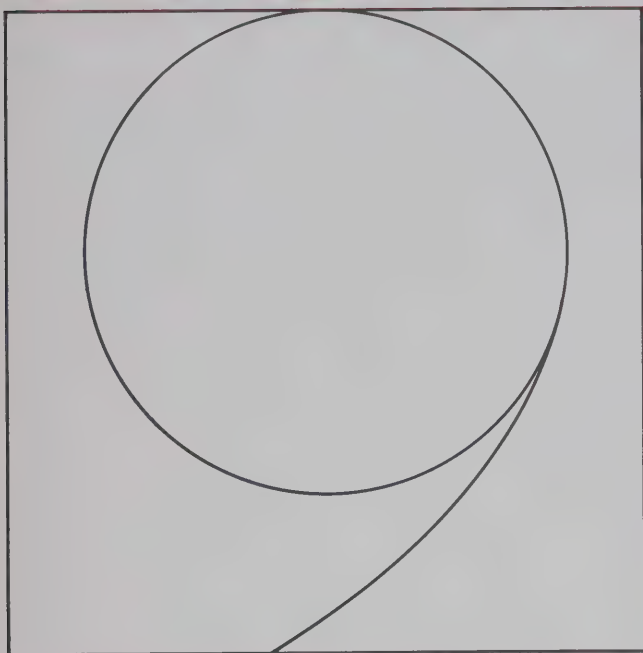
Board of Management of District of Thunder Bay (Pinewood Court Home for the Aged) and Canadian Union of Public Employees, Local 2179, Bicknell, Simon, Holt — 6 pages.

Christie Park Nursing Homes Limited and Service Employees Union, Local 204 (full-time and part-time employees), H.D. Brown, Acton — 12 pages; dissent: Noonan.

A1-Mar Nursing Home and Service Employees Union, Local 204, Potter, Cooper, Humphrey — 17 pages.

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Monthly Bulletin



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Hon. Robert Elgie, M.D., Minister
T.E. Armstrong, QC, Deputy Minister

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Appointment of Arbitrators

Forms for requests for appointment of arbitrator under Section 37a of the *Labour Relations Act* are available on request, from the Office of Arbitration.

Arbitrators

The following persons have been approved by the Minister as chairmen of boards of arbitration or single arbitrators pursuant to Section 37a(10) of the *Labour Relations Act*:

Mr. Frank Boscariol, 315 Rose Park Drive, Toronto, Ontario, M4T 1R8; telephone (416) 482-4771.

Professor Katherine Swinton, Faculty of Law, University of Toronto, Toronto, Ontario, M5S 1A1; telephone (416) 978-2708.

Awards

The following awards were filed with the Office of Arbitration during the month of September, 1979, under the *Labour Relations Act* as amended.

The summary was prepared at the Faculty of Law, Queen's University, under the supervision of C.G. Simmons, B.A., B.C.L., LL.M., and D.D. Carter, B.A., B.C.L., LL.B.

* Indicates award to be reported in full or in part in *Labour Arbitration Cases*.

Bargaining Unit

Extension of operations to new location in same municipality — new location within scope of bargaining unit; grievance allowed. *Re Ford Motor Company of Canada Limited and United Automobile Workers, Local 240; policy grievance*, September 4, 1979. Burkett — 31 pages. (1)

Classification

Improper classification of jobs alleged: comparison of requirements with benchmarks established in classification manual; grievances allowed. *Re Carleton University and Carleton University Support Staff Association; Dowler et al grievances*, September 21, 1979. Majority: H.D. Brown, Millar — 29 pages; dissent: Bernardo — 11 pages. (2)

Temporary transfer; grievor assigned to job within higher classification — compensation at rate of higher classification depending on ability to perform full duties of classification or specific job performed; grievance allowed. *Re Dupont of Canada Limited and Canadian Chemical Workers Union, Local 28; Dillabough grievance*, September 12, 1979. Majority: Kennedy, McIlwain — 12 pages; dissent: Binning — 3 pages; addendum: Kennedy — 1 page. (3)*

Compensation

Apportionment of blame where wrongful discharge — compensation reduced by 50%. *Re Alcan Canada Foils, Division of Alcan Canada Products Limited and Printing Specialties and Paper Products Union, Local 466; Jenkinson grievance*, September 19, 1979. Kennedy, Geiger, Paulin — 7 pages. (4)

Demotion

Disciplinary demotion inappropriate — grievance allowed. *Re The Sherway Inn — Owner D. Greenberg, 5487 Dundas Street West, Islington, Ontario and Hotel and Club Employees' Union, Local 299; Grougiannis grievance*, August 28, 1979. Majority: McCulloch, Dobson — 9 pages; dissent: Fenkell — 1 page. (5)

Lack of work — not a temporary transfer for convenience of company resulting in higher rate; grievance dismissed. *Re Indusmin Limited and United Cement, Lime and Gypsum Workers International Union, Local 488; Pettitt grievance*, September 14, 1979. Majority: Palmer, Gordon — 9 pages; dissent: Nokes. (6)

Qualifications; employee with less seniority but more experience retained — grievance dismissed. *Re Falconbridge Nickel Mines Limited and Sudbury Mine, Mill and Smelter Workers' Union, Local 598; Laporte grievance*, September 25, 1979. Majority: M.G. Picher, Valin — 12 pages; dissent: McIntyre. (7)

Discharge

Absence without leave — employer unreasonable in denying leave of absence; reinstatement with compensation. *Re Tonka Corporation Canada Limited and International Moulders and Allied Workers Union; Fortunato grievance*, August 29, 1979. Rayner — 13 pages. (8)

Absenteeism — no likelihood of improvement: grievance dismissed. *Re Wabco Limited and United Electrical, Radio & Machine Workers of America, Local 558; Hamilton grievance*, August 31, 1979. Majority: O'Shea, Earle — 21 pages; dissent: Bosnich — 2 pages. (9)

Absenteeism; culminating incident alleged: grievance dismissed. *Re Champion Spark Plug Company of Canada Limited and United Automobile Workers, Local 195; McKee grievance*, September 14, 1979. Palmer — 13 pages. (10)

Absenteeism; emotional and psychological problems — reinstatement without compensation. *Re International Harvester Company and United Automobile Workers, Local 127; Tricker grievance*, August 15, 1979. Rayner — 8 pages. (11)

Absenteeism; grievor failing to report for work because of belief that he was on suspension; grievance allowed. *Re Firestone Canada Limited (Hamilton Plant) and Local Union 113, United Rubber, Cork, Linoleum and Plastic Workers of America; employee grievance*, September 10, 1979. Majority: Betcherman, Switzman — 9 pages; dissent: Gilmore — 4 pages. (12)

Breach of plant rules regarding smoking; reinstatement without compensation. *Re Livingston Mutual Warehousing Limited and Teamsters, Local 419; Godward grievance*, September 11, 1979. Majority: Palmer, Weir — 11 pages; dissent: Saint. (13)

Careless driving — grievor at fault; grievance dismissed. *Re I.C.L. International Carriers Limited, Special Commodities Division and Teamsters Union, Local 880; Neidrauer grievance*, August 22, 1979. Stewart — 27 pages. (14)

Culminating incident: horseplay — grievance dismissed. *Re Air King Limited and International Association of Machinists and Aerospace Workers, Local 1817; Lake grievance*, September 5, 1979. Majority: Linden, Griffiths — 8 pages; dissent: Wren — 3 pages. (15)

Culminating incident; improper method of carrying out work resulting in financial loss to employer — grievance dismissed. *Re Martin-Brower Company and Teamsters, Local 419; Miles grievance*, September 11, 1979. Majority: Palmer, Black — 8 pages; dissent: Weir. (16)

Culminating incident; poor attendance record — reinstatement with conditions. *Re Victory Soya Mills Limited and International Chemical Workers, Local 247; Marshall grievance*, July 31, 1979. Palmer, Joyce, Wilson — 7 pages. (17)

Culminating incident; truck driver discharged as a result of accident in company truck — grievance dismissed. *Re Network Transport (Ontario) Limited and Canadian Chemical Workers, Local 19(c); Watts grievance*, July 10, 1979. Majority: Barton, Dean — 11 pages; dissent: Stewart. (18)

Culminating incident; work performance unsatisfactory — grievance dismissed. *Re International Harvester Company and United Automobile Workers, Local 127; Erickson grievance*, August 16, 1979. Rayner — 8 pages. (19)

Failure to comply with rule set out in collective agreement — grievance dismissed. *Re Frederick Transport Limited and Canadian Transportation Workers Union Number 188; Tracey grievance*, September 21, 1979. Majority: Hinnegan, Winkler — 12 pages; dissent: Weir. (20)

Fighting — physical retaliation to thrown coffee constituting fighting; grievance dismissed. *Re Keeprite Products Limited and Keeprite Workers' Independent Union; Vinnai grievance*, September 13, 1979. R.J. Roberts — 3 pages. (21)

Fighting — throwing of coffee constituting fighting; grievance dismissed. *Re Keeprite Products Limited and Keeprite Workers' Independent Union; Judson grievance*, August 29, 1979. Palmer — 9 pages. (22)*

Fighting with fellow employee — reinstatement without compensation. *Re Silverwoods Dairies, Division of Silverwood Industries Limited and Canadian Union of Operating Engineers and General Workers Local 101; Clay grievance*, August 24, 1979. Majority: O'Connor, Salmon — 7 pages; dissent: Lang — 3 pages. (23)

Incompetence: grievor failing to perform job in satisfactory manner — grievance dismissed. *Re Iberia Airlines of Spain and Carmen Soriano*, September 24, 1979. Kennedy — 7 pages. (24)

Insubordination and poor workmanship — culminating incident; tardiness; grievance dismissed. *Re Canadian Bridge Division Hawker Siddeley Canada Limited and United Steelworkers of America, Local 2471; Smith grievance*, September 5, 1979. Hinnegan — 4 pages. (25)

Insubordination: refusal to perform work requested — suspension substituted. *Re Excel Metalcraft Ltd. and United Automobile Workers, Local 396; Huffa grievance*, July 6, 1979. Majority: Rayner, Gorman — 7 pages; dissent: Noonan — 2 pages. (26)

Marijuana used on company property during shift — grievance dismissed. *Re Firestone Steel Products of Canada and United Automobile Workers, Local 27, Unit Number 17; McCormick grievance*, September 11, 1979. Samuels — 6 pages. (27)

Negligence; grievor operating company vehicle carelessly causing extensive damage — past disciplinary record considered; reinstatement without compensation. *Re Griffith Mine, Pickands Mather and Company — Managing Agents and United Steelworkers of America, Local 7020; Coulson grievance*, September 4, 1979. Bicknell, McMullen, Dinsdale — 12 pages. (28)

Physical inability to perform work — no obligation to find work for grievor; grievance dismissed. *Re AP Parts of Canada Limited and United Automobile Workers, Local 252; Toy grievance*, August 16, 1979. Palmer, Porter, Sanderson — 10 pages. (29)

Probationary employee — probationary employee not entitled to same degree of protection as regular employees; grievance dismissed. *Re Sandwich, Windsor and Amherstburg Railway Company and Division 616 of the Amalgamated Transit Union; Silk grievance*, September 25, 1979. Majority: R.J. Roberts, Evans — 8 pages; dissent: Eaton. (30)

Probationary officer released for assault on citizen and providing false statements to investigating officer; advancement of second ground subsequently — grievance dismissed. *Re Metropolitan Toronto Board of Commissioners and Metropolitan Toronto Police Association; Dearing grievance*, August 30, 1979. Teplitsky — 10 pages. (31)

Sleeping on the job — 7-month suspension substituted. *Re Monarch Fine Foods Company Limited and Milk and Bread Drivers, Dairy Employees, Caterers and Allied Employees, Local Union 647; Pellicciotta grievance*, August 1, 1979. Brunner, MacDonald, Thomson — 13 pages. (32)

Unauthorized leave of absence — suspension substituted. *Re Charles Wilson Limited and Canadian Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers; Grant grievance*, September 26, 1979. Majority: H.D. Brown, Green — 39 pages; addendum: Green — 1 page; dissent: McKillop — 1 page. (33)

Unsatisfactory work performance — progressive discipline appropriate; reinstatement with partial compensation. *Re Goodyear Canada Incorporated and United Rubber, Cork, Linoleum and Plastic Workers of America, Local 232; Samra grievance*, August 29, 1979. Teplitsky — 5 pages. (34)

Work performance unsatisfactory — suspension substituted. *Re 336496 Ontario Limited (Groves Park Lodge) and Canadian Union of Public Employees, Local 2103; Delarge grievance*, August 30, 1979. Scott — 15 pages. (35)

Discipline

Actions beyond grievor's scope of authority — mere error of judgement; grievance allowed. *Re Charles Wilson Limited and Canadian Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers; Grant grievance*. See (33), *supra*. (36)

Absence from work station without informing foreman — grievance dismissed. *Re Steel Company of Canada, Limited, Hilton Works and United Steelworkers of America, Local Union 1005; Gojmerac grievance*, August 28, 1979. Majority: Rayner, Storie — 7 pages; dissent: Hynd — 2 pages. (37)

Assault on supervisor alleged — credibility in issue; grievance dismissed. *Re Budd Automotive Company of Canada Limited and United Automobile Workers, Local 1451; McLellan grievance*, September 5, 1979. Palmer — 10 pages. (38)

Inattention to duty alleged — minor matter not justifying discipline; suspension removed and compensation. *Re Victoria Hospital Corporation and London and District Service Workers Union, Local 220; Somani grievance*, August 25, 1979. Majority: H.D. Brown, Switzman — 12 pages; dissent: Roberts — 1 page. (39)

Insubordination: failure to wear company approved footwear — substitution of one-day suspension. *Re Westcane Sugar Limited and Canadian Union of Operating Engineers, Local 101*; September 10, 1979. Majority: Betcherman, Farrar — 10 pages; dissent: Lang — 3 pages. (40)

Insubordination: refusal to be assigned work — grievance dismissed. *Re Collingwood Shipyards and United Steelworkers of America, Local 6320; Merghani grievance*, September 21, 1979. Sheppard — 13 pages. (41)

Insubordination: refusal to do job assigned by foreman; grievor believing that job outside job description — grievance dismissed. *Re Nelson Crushed Stone, Division of King Paving and Materials, Division of Flintkote Company of Canada Limited and United Cement, Lime and Gypsum Workers International Union, Local #494, Webster grievance*, August 27, 1979. Brunner, Nokes, Cosburn — 8 pages. (42)

Insubordination: refusal to perform work believed to be unsafe — grievance allowed. *Re W.J. Mowat Limited and Specialized Parcel Delivery and Handlers' Union, Local 1681; Merlin grievance*, June 29, 1979. Majority: Brunner, Weisbach — 12 pages; dissent: Metras. (43)

Leaving work without permission: temperature in work area allegedly excessive — part of illegal strike; grievance dismissed. *Re Budd Automotive Company of Canada Limited and United Automobile Workers, Local 1451; Hernandez grievance*, September 25, 1979. H.D. Brown — 17 pages. (44)

Negligence in operation of vehicle alleged — not established; grievance allowed. *Re Metropolitan Toronto, Municipality of, and Canadian Union of Public Employees, Toronto Civic Employees Union, Local Union 43; Martin grievance*, September 17, 1979. Majority: Brunner, Tate — 12 pages; dissent: Whittaker — 4 pages. (45)

Theft; two-week suspension — grievance dismissed. *Re Valhalla Inn Limited (Islington Inn) and Hotel and Club Employees' Union, Local 299, Toronto, Ontario; Crichton grievance*, September 11, 1979. O'Shea — 17 pages. (46)

Work performance: failure to meet production standard — suspension appropriate; grievance dismissed. *Re Raybestos-Manhattan (Canada) Limited and United Steelworkers of America, Local 5141; Lodge et al grievance*, September 12, 1979. McLaren — 13 pages. (47)

Employment Status

Lump sum payable in lieu of retroactivity when recall to full employment — full employment defined; grievance allowed. *Re Crane Canada Limited and International Association of Machinists and Aerospace Workers, Local 1550; Brown grievance*, August 2, 1979. Majority: Beck, Jardine — 15 pages; dissent: Gordon — 8 pages. (48)

Grievance Procedure

Timeliness — agreement to treat grievance as representative; s. 37(5a), *Labour Relations Act*, applied. *Re Budd Automotive Company of Canada Limited and United Automobile Workers*. See (44), *supra*. (49)

Timeliness — employer waiving its right to insist on time limits; extension of time limits under s. 37(5a) of the *Labour Relations Act* also appropriate. *Re Red Lake Margaret Cochenour Memorial Hospital and Ontario Nurses' Association; Ingram grievance*, September 5, 1979. Majority: Abbott, Angus — 29 pages; not concurring: White. (50)

Timeliness — extension under s. 37(5a) of *Labour Relations Act* appropriate. *Re Inmont Canada Limited and International Chemical Workers Union, Local 177; Woodall grievance*, September 4, 1979. Weatherill — 9 pages. (51)

Timeliness — no reasonable grounds to relieve against time limits according to Ontario *Labour Relations Act*; grievance not arbitrable. *Re Falconbridge Nickel Mines Limited and Canadian Guards Association, Local 107; Dockery grievance*, September 11, 1979. Majority: Palmer, Gordon — 11 pages; dissent: Burrows — 2 pages. (52)

Holidays

Lieu days — grievors working holiday entitled to day in lieu; grievance allowed. *Re Domglas Limited and United Glass and Ceramic Workers of North America, Local 260; group grievance*, September 6, 1979. Majority: Shime, Bigley — 9 pages; concurring opinion: Bertram — 1 page. (53)

Holiday Pay

Sick leave coinciding with holiday — no entitlement to holiday pay; grievance dismissed. *Re Welland Forge Limited and United Electrical, Radio and Machine Workers of America, Local 523; Rioux grievance*, September 4, 1979. Majority: Hinnegan, MacDermid — 14 pages; dissent: Bosnich — 2 pages. (54)*

Work performed on holiday paid at triple time — additional entitlement to holiday pay; grievance allowed. *Re Ottawa Board of Education and Ottawa Board of Education Employees Association; group grievance*, September 5, 1979. Majority: Weatherill, Riley — 8 pages; dissent: Laishley — 2 pages. (55)*

Job Posting

Job title omitted — job titles existing even though not set out in collective agreement; grievance allowed. *Re Beach Appliances International Limited and United Automobile Workers; policy grievance*, August 30, 1979. Curtis — 4 pages. (56)

Lay-Off

Bumping rights — grievor entitled to bump into a particular job; grievance allowed. *Re Beach Appliances International Limited and United Automobile Workers; Angers grievance*, September 10, 1979. Fraser — 14 pages. (57)

Bumping rights — grievor not entitled to claim particular job; grievance dismissed. *Re Beach Appliances International Limited and United Automobile Workers, Local 641; Killmartin grievance*, June 27, 1979. Roach — 7 pages. (58)

Bumping rights — lateral transfer not possible within terms of collective agreement; grievance dismissed. *Re Falconbridge Nickel Mines Limited and United Steelworkers of America; Monaghan grievance*, August 10, 1979. Palmer — 8 pages. (59)*

One-day shutdown — not constituting lay-off; grievance dismissed. *Re Indusmin Limited and United Cement, Lime and Gypsum Workers International Union, Local 306; McArthur grievance*, September 14, 1979. Majority: Palmer, Gordon — 9 pages; dissent: Nokes. (60)

Qualifications — requirement that grievor actually possess qualifications; grievance dismissed. *Re Kirsch of Canada Limited and United Automobile Workers, Local 636; Colbran grievance*, September 14, 1979. Brent — 6 pages. (61)

Qualifications of grievors — grievance dismissed. *Re Kleen-Stik Products Limited and Canadian Paperworkers Union, Local 308; group grievance*, September 21, 1979. Brunner, Brisbin, Fagan — 4 pages. (62)

Reduction of employees in grievor's classification — lay-off proper; grievance dismissed. *Re Beach Appliances International Limited and United Automobile Workers; Hupe grievance*, August 31, 1979. Curtis — 5 pages. (63)

Leave of Absence

Medical condition preventing grievor from performing some tasks — unpaid leave of absence appropriate; grievance dismissed. *Re Leamington District Memorial Hospital and Ontario Nurses' Association; Platsko grievance*, September 4, 1979. Majority: Brunner, Bartlet — 7 pages; dissent: Richards — 8 pages. (64)

Maternity Leave

Early return from maternity leave requested by grievor — maternity leave to be shortened only with consent of employer; grievance dismissed. *Re Temiskaming Hospital and Ontario Nurses' Association; Horner grievance*, September 5, 1979. Majority: Linden, Buckland — 7 pages; dissent: Herman — 6 pages. (65)

Overtime

Distribution — distribution to be on departmental basis; grievance dismissed. *Re Dominion Stores Limited and Retail, Wholesale and Department Store Union, Local 414, Catney and Radl grievance*, September 17, 1979. Majority: Weatherill, White — 9 pages; dissent: Dahmer — 3 pages. (66)

Distribution — failure to assign overtime to appropriate classification; grievance allowed. *Re Nelson Crushed Stone, Division of King Paving and Materials, Division of Flintkote Company of Canada Limited and United Cement, Lime and Gypsum Workers International Union, Local Union #494; Webster grievance*, August 27, 1979. Brunner, Nokes, Cosburn — 4 pages. (67)

Distribution — improper assignment but grievor not entitled to complain; grievance dismissed. *Re S.K.D. Manufacturing Company Limited and United Automobile Workers, Local 89; Sich grievance*, September 17, 1979. Brandt — 13 pages. (68)*

Distribution — more senior employees entitled to work; grievance dismissed. *Re Collingwood Shipyards and United Steelworkers of America, Local 6320; Larkin grievance*, September 12, 1979. Sheppard — 8 pages. (69)

Distribution; overtime assigned according to predicted requirements — later change of requirements done in good faith; grievance dismissed. *Re General Tire and Rubber Company Formerly Mansfield-Denman General Company Limited and Local Union 455 United Rubber, Cork, Linoleum and Plastic Workers of America; Plamondon grievance*, September 13, 1979. Majority: Brent, Scott — 8 pages; dissent: Bruder. (70)

Make-up time provided where improper distribution of overtime — employer liable to pay overtime rates for normally scheduled work; grievance allowed. *Re Consolidated-Bathurst Packaging Limited and International Woodworkers of America, Local 2-69; policy grievance*, September 14, 1979. Majority: Kennedy — 12 pages; dissent in part: Schachter — 2 pages; dissent: Rogers — 7 pages. (71)

Overtime work defined — grievance allowed in part. *Re Deloro Stellite, Division of Canadian Oxygen Limited, and United Steelworkers of America, Local 5522; union grievance*, September 4, 1979. Palmer — 11 pages. (72)

Remedy where improper distribution — “in kind” remedy appropriate. *Re Russelsteel Ltd./Ltee. (Toronto) and United Steelworkers of America, Local 6473; Paradiso grievance*, September 12, 1979. Gorsky — 5 pages. (73)

Scheduling: overtime assignment cancelled prior to beginning of overtime shift — grievance dismissed. *Re Collingwood Shipyards and United Steelworkers of America, Local 6320; Ring grievance*, September 10, 1979. Sheppard — 8 pages. (74)

Part-time Employees

Effect of government regulations disqualifying employee from full-time status — grievance allowed in part. *Re Thames Valley Ambulance Limited and London Ambulance Attendants' Association; policy grievance*, September 10, 1979. Palmer, Healy, Ronski — 9 pages. (75)

Grievor designated part-time but regularly working more than 30 hours per week; full-time employee; grievance allowed. *Re Ottawa Citizen and Ottawa Newspaper Guild, Local 205; Thistle grievance*, September 4, 1979. Hinnegan, Rupert, Dinsdale — 23 pages. (76)

Procedure

Application for judicial review — whether board should adjourn pending court decision on board's jurisdiction: interim decision to arbitrate. *Re Board of Education for the Borough of Scarborough and Ontario Secondary School Teachers' Federation, District 16; Woznica grievance*, September 7, 1979. Majority: M. Picher, Goudge — 7 pages; dissent: Gordon; addendum: Picher, Goudge — 3 pages. (77)

Promotion

Qualifications — employer introducing new qualifications; grievance allowed. *Re Denison Mines Limited and United Steelworkers of America, Local 5815; Laliberte grievance*, September 5, 1979. O'Shea — 16 pages. (78)

Qualifications — grievor not possessing sufficient experience; grievance dismissed. *Re Falconbridge Nickel Mines Limited and Sudbury Mine, Mill and Smelter Workers Union, Local 598; Furtak grievance*, July 9, 1979. Majority: Brunner, Valin — 8 pages; dissent: Richards — 6 pages. (79)

Qualifications — grievor qualified; grievance allowed. *Re United Counties of Stormont, Dundas and Glengarry, Corporation of, and Canadian Union of Public Employees, Local 1792; union grievance*, August 8, 1979. Roach, Bowman, Legault — 9 pages. (80)

Qualifications — no evidence of successful candidate's qualifications or ability; grievance allowed. *Re Metropolitan Toronto Library Board and Canadian Union of Public Employees, and its Local 1582; Lee grievance*, September 27, 1979. Majority: Dunn, Wilson — 12 pages; dissent: Noble — 5 pages. (81)

Qualifications — previous negative assessment improper; grievance allowed. *Re Beach Appliances International Limited and United Automobile Workers, Local 641; Weir grievance*, June 28, 1979. Roach — 6 pages. (82)

Qualifications — seniority to govern only if qualifications set out in collective agreement are “relatively equal”; grievance dismissed. *Re Crothers Limited and United Automobile Workers; McNally grievance*, September 11, 1979. Majority: Kruger, Hatley — 6 pages; dissent: Cooper. (83)

Qualifications; appropriate scope of arbitral review — grievance dismissed. *Re University of Toronto, Governing Council of, and Canadian Union of Public Employees, Local 1230; group grievance*, September 14, 1979. Majority: Burkett, Cook — 19 pages; dissent: Wren. (84)*

Qualifications; physical inability to perform job — reasonableness of this decision based on company's knowledge at the time of job posting; grievance upheld. *Re Honeywell Limited and United Automobile Workers, Local 80; Lamb grievance*, September 14, 1979. Majority: Linden, Ball — 17 pages; dissent: White. (85)

Qualifications where lead hand position — grievance dismissed. *Re Glidden Company, Division of SCM Corporation (Canada) Limited and Canadian Chemical Workers Union, Local 23; union grievance*, August 22, 1979. Majority: Palmer, Rogers — 13 pages; dissent: Dawe. (86)

Seniority governing only when merit relatively equal — grievance dismissed. *Re Sudbury Regional Police Association and Sudbury Regional Board of Commissioners of Police; group grievance*, August 22, 1979. Samuels — 100 pages. (87)

Trial period — lack of reasonable basis for company assessment; further trial period ordered. *Re Standard Tube Canada Limited and United Automobile Workers, Local 636; Spice grievance*, September 10, 1979. H.D. Brown — 9 pages. (88)

Reporting Pay

Plant shutdown because of power failure — entitlement to reporting pay; grievance allowed. *Re General Steelwares Limited and United Steelworkers of America, Local 3789; group grievance*, August 21, 1979. Palmer — 6 pages. (89)

Acting appointment made when director "absent" — payable when director not on call; grievance allowed in part. *Re County of Essex, Corporation of, and Ontario Nurses' Association; union grievance*, August 28, 1979. Majority: R.J. Roberts, Thrasher — 4 pages; dissent: Mayne — 3 pages. (90)

Scheduling of Work

Operation increased from 2 shift, 5 day week to 3 shift, 7 day week — collective agreement not limiting the scheduling of additional shifts; grievance dismissed. *Re Canadian Fram Limited and United Automobile Workers, Local 35; policy grievance*, August 17, 1979. Palmer — 11 pages. (91)

Seniority

Accumulation — employee transferring back to bargaining unit entitled to seniority previously accumulated in bargaining unit. *Re Canadian Fram Limited and United Automobile Workers, Local 35; policy grievance*, September 6, 1979. Hinnegan — 8 pages. (92)

Sick Pay

Entitlement to Weekly Indemnity Benefits and Longterm Disability Benefits under collective agreement — grievor unable to perform any work which company had available but not totally disabled; grievance allowed in part. *Re Steinberg's Limited (Miracle Mart Division) and Retail Clerks Union Local No. 486; Bernard grievance*, September 5, 1979. Majority: O'Shea, Hersey — 20 pages; partial dissent: Hersey — 1 page; dissent: Jolicoeur — 5 pages. (93)*

Requirement of doctor's certificate — requirement reasonable; grievances dismissed. *Re Metropolitan Toronto, Municipality of, and Canadian Union of Public Employees, Toronto Civic Employees Union, Local Union 43; Triolo and Baldwin grievances*, September 13, 1979. Burkett — 13 pages. (94)

Supplemental Unemployment Benefit

Plant closed because of water shortage caused by tornado — employees whose jobs depended on water supply not entitled. *Re Standard Tube Canada Limited and United Automobile Workers, Local 636; policy grievance*, August 31, 1979. O'Shea — 14 pages. (95)

Transfer

Illness preventing transfer of grievor — transfer of more junior employee not improper; grievance dismissed. *Re Ontario Hydro and Ontario Hydro Employees' Union Local 1000; Feick grievance*, August 2, 1979. Teplitsky, McCullough, Hamilton — 7 pages; addendum: McCullough — 3 pages. (96)

Transfer to fill temporary vacancy to be made according to seniority — grievance allowed. *Re Standard Tube Canada Limited and United Automobile Workers, Local 636; Gee grievance*, September 10, 1979. H.D. Brown — 8 pages. (97)

Union Security

"Monthly dues" to be deducted — union seeking deduction of one-time payment — reference to past practice; grievances allowed. *Re Canadian National Institute for the Blind and Service Employees Union (Industrial Shops Employees); policy grievances*, August 2, 1979. Majority: Teplitsky, Wren — 7 pages; dissent: Renna — 2 pages. (98)*

Vacations

Absence while receiving Workman's Compensation and sick leave pay — proportional reduction of vacation appropriate; grievance dismissed. *Re Victoria Hospital Corporation and London and District Service Workers Union, Local 220; Difede grievance*, September 15, 1979. H.D. Brown, Walsh, Gardner — 11 pages. (99)

Entitlement depending on length of service within bargaining unit — grievance dismissed. *Re Regional Municipality of Haldimand-Norfolk, Corporation of, and London and District Service Workers Union, Local 220; Werner grievance*, July 30, 1979. Majority: Scott, Freedman — 4 pages; dissent: Mayne — 4 pages. (100)

Leave of absence without pay taken for four months — vacation not to be apportioned; grievance upheld. *Re City of Sudbury, Corporation of, and Canadian Union of Public Employees Local 6; Lalonde grievance*, August 31, 1979. Majority: Hinnegan, McVey — 4 pages; dissent: McIntosh. (101)

Wages

Automatic wage progression clause: appropriate increase — grievance upheld. *Re Fleet Industries, Division of Ronyx Corporation Limited and International Association of Machinists and Aerospace Workers, Frontier Lodge Number 171; policy grievance*, September 12, 1979. Whyte, Wren, Marchand — 16 pages. (102)

Entitlement to payment for balance of shift when injured on duty; grievance upheld. *Re General Tire and Rubber Company Formerly Mansfield-Denman General Company Limited and Local Union 455 United Rubber, Cork, Linoleum and Plastic Workers of America; Guillemette grievance*, September 13, 1979. Majority: Brent, Bruder — 6 pages; dissent: Scott — 3 pages. (103)

Position on salary grid — grievance allowed. *Re Red Lake Margaret Cochenour Memorial Hospital and Ontario Nurses' Association; Ingram grievance*. See (50), *supra*. (104)

Training for relief position — grievor entitled to job rate for that position during training period; grievance allowed. *Re Domtar Limited and Printing Specialties Union, Local 466, Skinner grievance*, August 13, 1979. Majority: Teplitsky, Granatstein — 4 pages; dissent: Byers — 2 pages. (105)

Wage increase — increase affecting top rate; grievance allowed. *Re Crown Electrical Manufacturing Limited and United Automobile Workers, Local 397; union grievance*, September 12, 1979. Palmer — 6 pages. (106)

Work Assignment

Bargaining unit work performed by new owners of business — grievances allowed. *Re 401548 Ontario Limited and Retail, Wholesale and Department Store Union, Local 448; Cail et al grievances*, September 24, 1979. Rubenstein — 16 pages. (107)

Foreman performing work normally done by bargaining unit employee — unprecedented and critical emergency situation; grievance dismissed. *Re Kelsey-Hayes Canada Limited and Local Union 636 United Automobile Workers; Cannon grievance*, September 10, 1979. O'Shea — 12 pages. (108)

Use of temporary part-time employees — permanent part-time employees not having priority; grievance dismissed. *Re Bell Canada and Communications Union Canada; policy grievance*, August 31, 1979. Majority: Kennedy, Healy — 9 pages; dissent: Walsh. (109)

The following awards in interest arbitrations under *The Hospital Labour Disputes Arbitration Act* were also filed with the Office of Arbitration during the month of September, 1979.

Belleville General Hospital and Canadian Union of Operating Engineers and General Workers, Local 101, Davidson, Busch, Lang — 8 pages.

City of St. Thomas, Corporation of, (Valleyview Home for the Aged) and London and District Service Workers Union, Local 220, Samuels, Noble — 33 pages; dissent in part: Walsh — 3 pages.

Etobicoke General Hospital and Association of Allied Health Professionals, Ontario, Brown, Drmaj, McCall — 11 pages; addendum: Drmaj — 1 page.

Little's Nursing Home (Tecumseh) Limited and Service Employees' Union, Local 210, Brent, Docherty, McConville — 25 pages.

Madonna Nursing Home and Canadian Union of Public Employees, Local 2199, Betcherman, Churchmuch — 12 pages; partial dissent: Walsh.

Meadow Lark Lodge formerly Hillsdale Nursing Home and Pharmacists and Professional Employees Association, Local 1976 (part-time), Brunner, Buck — 24 pages; dissent: Nokes — 1 page.

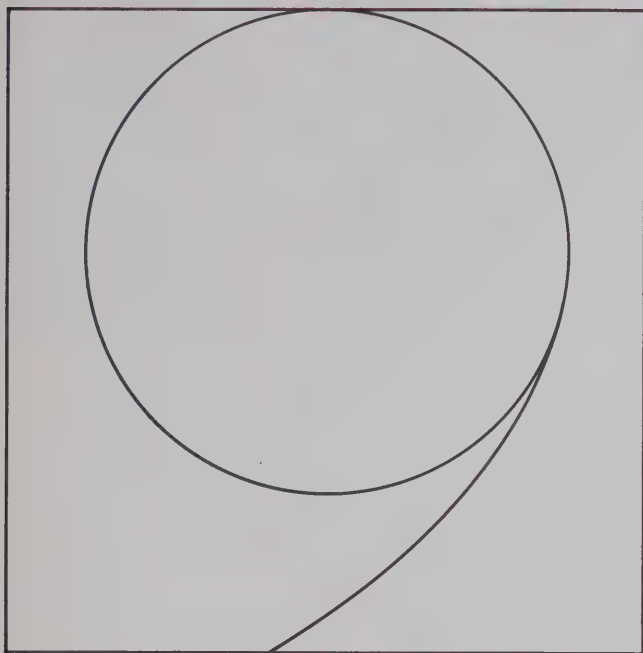
Queensway-Carleton Hospital and International Union of Operating Engineers, Local 796 (Stationary Engineers), Kennedy, Rivet, Ball — 6 pages.

Regional Municipality of Waterloo (Sunnyside Home) and Ontario Nurses' Association. Clarification of award, Rubenstein, Paliare — 7 pages; partial dissent: Noble.

Rest Haven Private Hospital and Canadian Union of Public Employees, Local 778, Betcherman, Jovanovich — 17 pages; dissent: Edwards — 3 pages.

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Awards

The following awards were filed with the Office of Arbitration during the month of October, 1979, under the *Labour Relations Act* as amended.

The summary was prepared at the Faculty of Law, Queen's University, under the supervision of C.G. Simmons, B.A., B.C.L., LL.M., and D.D. Carter, B.A., B.C.L., LL.B.

*Indicates award to be reported in full or in part in *Labour Arbitration Cases*.

Bereavement Leave

Death occurring during vacation — grievance upheld. *Re Canadian Salt Company and United Automobile Workers, Local 240; Cousineau grievance*, October 1, 1979. R.J. Roberts — 5 pages. (1)

Call-back Pay

Two special assignments prior to commencement of normal shift — double call-back; grievance allowed. *Re Labatt's Ontario Breweries Limited and National Brewery Workers' Union; Root grievance*, October 17, 1979. McCulloch — 7 pages. (2)

Classification

Extent of responsibilities — sufficient "credit/sections" to justify higher classification; grievance allowed. *Re Sudbury Board of Education and Ontario Secondary School Teachers' Federation; Holyman grievance*, October 18, 1979. Linden — 7 pages. (3)

Regular duties of higher classification performed on sporadic basis — grievance dismissed. *Re Dashwood Industries Limited and United Brotherhood of Carpenters and Joiners of America, Local 3054; Lavier grievance*, October 18, 1979. Brandt — 12 pages. (4)

Scope of grievor's work changed: creation of new classification; grievance allowed. *Re Domglas Limited and United Glass and Ceramic Workers of North America, Local 260; Poores grievance*, October 19, 1979. Majority: Weatherill, Currie — 8 pages; dissent: Bertram — 2 pages. (5)

Damages

Loss of earnings — method of calculating loss; consideration of duty to mitigate. *Re McGraw-Edison of Canada Limited and International Union of Electrical, Radio and Machine Workers, Local 595; Trimm grievance*, October 15, 1979. Dunn — 4 pages. (6)

Mitigation — failure to mitigate; compensation reduced. *Re Rodas Investments Limited and Hotels, Clubs, Restaurants, Taverns Employees' Union, Local 261; Sanchez and Gendron grievances*, October 3, 1979. Scott — 6 pages. (7)

Demotion

Negligent performance of work — just and sufficient cause; grievance dismissed. *Re Consolidated-Bathurst Packaging Limited and International Woodworkers of America, Local Union No. 2-69; Lopata grievance*, September 27, 1979. Majority: Linden, Rogers — 9 pages; dissent: Schachter — 4 pages. (8)

Reduction in work force — grievor less qualified; grievance dismissed. *Re Falconbridge Nickel Mines Limited and Sudbury Mine, Mill and Smelter Workers Union, Local 598; Golden grievance*, October 16, 1979. Majority: Brunner, Valin — 10 pages; dissent: Robbins — 11 pages. (9)

Discharge

Absence from work; grievor remanded in custody while awaiting sentencing for conviction of breaking and entering — not satisfactory reason for absence; grievance dismissed. *Re Allied Chemical Canada Limited and Local 89, United Automobile Workers; Beckett grievance*, October 18, 1979. Brandt — 13 pages. (10)*

Absence from work without permission — grievor's belief that employer was unjustly denying him certain work not a satisfactory reason for absence; grievance dismissed. *Re American Motors (Canada) Limited and United Automobile Workers; Cosgrove grievance*, October 23, 1979. Teplitsky — 2 pages. (11)

Absence from work without reasonable excuse — grievor refusing to return to work after his Workmen's Compensation payments discontinued — claim of continuing disability not a reasonable excuse; grievance dismissed. *Re Algoma Steel Corporation Limited and United Steelworkers of America, Local 2251; Kelly grievance*, September 21, 1979. Majority: Rayner, Morley — 17 pages; did not concur: Keck. (12)

Absence without leave — wilful disregard of company's denial of leave; employee refusing to allow floating holidays or vacation to cover absence; grievance dismissed. *Re Kimberly Clark of Canada Limited and United Paperworkers International Union (Local 665); Kellar grievance*, October 10, 1979. Majority: O'Shea, Wakely — 23 pages; dissent: Hay. (13)

Absence without notifying employer — grievance dismissed. *Re Heatex Radiators Limited and Local 1686 Canadian Labour Congress; Weir and Saini grievance*, September 24, 1979. Bigelow — 3 pages. (14)

Absence without reporting to employer — no reasonable explanation; grievance dismissed. *Re Queensway General Hospital and Canadian Union of Public Employees, Local 1106; Abbruzzese grievance*, October 10, 1979. Hinnegan, Millage, Baldwin — 5 pages. (15)

Absenteeism — employer relying on too short a period of time to establish grievor's absentee pattern and not giving grievor chance to improve; suspension substituted, grievor put on eight month probation. *Re Canadian Rock Salt Company Limited and United Automobile Workers, Local 195; Gal grievance*, October 22, 1979. McLaren — 14 pages. (16)

Assault upon foreman — provocation alleged: criteria to consider in determining whether discharge appropriate; grievance dismissed. *Re Dunline Canada and United Automobile Workers, Local 1620; McIntyre grievance*, October 10, 1979. Brandt — 13 pages. (17)

Employer failing to appear at hearing — onus of proof not met; grievance allowed. *Re Queensbury Inn Enterprises Inc. and International Beverage Dispensers' and Bartenders' Union, Local 280; Farrugia grievance*, October 25, 1979. Majority: Kennedy, Fagan — 12 pages; not participating: Churchmuch. (18)*

Failure to report in and incompatibility — not informed that requirement to phone in; no evidence as to incompatibility; grievance upheld. *Re Canadian Pittsburgh Industries and International Brotherhood of Painters and Allied Trades, Glaziers and Metal Mechanics, Local 1824; Davidson grievance*, October 1, 1979. Rose, Strickland, Voisin — 5 pages. (19)

Illegal work stoppage — grievor's participation not sufficient to justify dismissal; penalty reduced to six months suspension. *Re Abex Industries, Dominion Brake Shoe Division and International Chemical Workers Union, Local 175 (Teamsters, Chemical, Energy and Allied Workers Local Union No. 2175); Terryberry grievance*, September 28, 1979. H.D. Brown, Everson, Sanderson — 18 pages. (20)

Insubordination: grievor persisting in asserting a claim for overtime for which he was not entitled — reprehensible behavior and open defiance to authority; suspension substituted. *Re Overnite Express Limited and Association of Employees of Overnite Express Limited; Reynolds grievance*, September 28, 1979. Brunner — 26 pages. (21)

Insubordination; grievor refusing to work diligently — mitigating factors considered; suspension substituted. *Re Network Transport Ontario Limited (York Cartage Service Limited) and Canadian Chemical Workers' Union; Irwin grievance*, October 9, 1979. Majority: O'Shea, Bost — 19 pages; dissent: Dean. (22)

Insubordination — seven separate alleged instances resulting in culminating incident — incidents not established; reinstatement with compensation. *Re Ford Motor Company of Canada Limited and United Automobile Workers, Local 707; Rondeau grievance*, September 24, 1979. Palmer — 46 pages. (23)

Intoxication — grievor's impairment not very great; first offence; grievor reinstated, suspension substituted. *Re Canadian Heat Treaters Limited and United Steelworkers of America; Davis grievance*, October 2, 1979. Majority: Brunner, Martin — 10 pages; partial dissent: McNaughton — 1 page. (24)

Lateness — reasonable excuse not offered until hearing; reinstatement without compensation. *Re Toronto Star Newspaper Limited and Southern Ontario Newspaper Guild; Smith grievance*, September 30, 1979. Pritchard — 17 pages. (25)

Possession and use of drugs on company property: right to discharge in such a case conferred on management — no jurisdiction to alter penalty; grievance dismissed. *Re Greb Industries Limited and United Shoe Workers of America, Local 309; Schlueter grievance*, October 12, 1979. Majority: Weatherill, Winkler — 7 pages; dissent: Bruder. (26)

Refusal to work overtime — absence of consent to overtime work as required by *The Employment Standards Act*; grievances allowed. *Re Dashwood Industries Limited and International Brotherhood of Carpenters and Joiners of America, Local 3054; VanDamme grievances*, October 23, 1979. Majority: Brandt, Manson — 12 pages; did not concur: Adamson. (27)*

Tampering with vending machine despite posted warning; grievance dismissed. *Re Reed Decorative Products Limited and Canadian Paperworkers Union, Local 304; Bilodeau grievance*, October 5, 1979. Majority: Hinnegan, Flash — 12 pages; dissent: Fagan — 1 page. (28)

Tardiness and use of abusive language — penalty reasonable in light of grievor's past discipline record; grievance dismissed. *Re Cadbury Schweppes Powell Limited, Cadbury Division and Milk and Bread Drivers, Dairy Employees, Caterers and Allied Employees, Local 647, Affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America; Murphy grievance*, October 19, 1979. Brunner — 8 pages. (29)

Unauthorized leave of absence alleged — not established that leave taken for improper purpose; grievance upheld. *Re International Harvester Company of Canada Limited and United Automobile Workers, Local 127; Dunlop grievance*, October 15, 1979. Barton — 13 pages. (30)

Unsatisfactory work performance — employer's assessment justified; grievance dismissed. *Re Despatch Industries Inc., Toronto Division and Sheet Metal Workers' International Association, Local Union #540; Brown grievance*, September 26, 1979. Majority: McIver, Sweeney — 14 pages; dissent: Voutsinos. (31)

Discipline

Absence due to sickness: failure to take reasonable steps to inform foreman prior to commencement of shift — grievance allowed in part. *Re J.H. Normick Inc. (Cochrane Division) and Lumber and Sawmill Workers' Union, Local 2995; Begin grievance*, September 28, 1979. Majority: Brunner, Valin — 9 pages; partial dissent: Fyshe — 3 pages. (32)

Absence without leave, grievor leaving early with minor injury — grievance dismissed. *Re Steel Company of Canada, Limited and United Steelworkers of America, Local 1005; Dobrowolsky grievance*, October 16, 1979. Majority: O'Shea, Morley — 11 pages; dissent: MacPherson. (33)

Absence without leave alleged — not established; grievance allowed. *Re Algoma Ore Division, Algoma Steel Corporation Limited and Local Union 3933 United Steelworkers of America; Oliver grievance*, October 15, 1979. Brent, Keck, Forbes — 8 pages. (34)

Abuse of patient alleged — provocation, reflex action alleged; lesser penalty substituted. *Re Waterloo, Regional Municipality of, (Sunnyside Home) and London and District Service Workers Union, Local 220; Newall grievance*, July 23, 1979. Majority: Ord, Noble — 9 pages; dissent: Switzman — 2 pages. (35)

Assault; grievor assaulting an employee of another company at grievor's work-site — self-defence; grievance allowed. *Re Metropolitan Toronto, Municipality of, and Canadian Union of Public Employees, Local 43; Power grievance*, October 2, 1979. Majority: Samuels, Tate — 4 pages; dissent: Riggs — 2 pages. (36)

Defacing of company property — rule unenforced; shorter suspension substituted. *Re Walker Exhausts and United Steelworkers of America; Penney grievance*, October 1, 1979. Arthurs — 7 pages. (37)

Failure to "call in sick" sufficiently early — non-culpable excuse established; grievance allowed. *Re Wellesley Hospital and Ontario Nurses' Association; Walrond grievance*, October 29, 1979. Majority: Adams, Symes — 8 pages; dissent: Stewart — 1 page. (38)

Gambling on company property — suspensions appropriate; grievances dismissed. *Re Labatt's Limited and International Brewery Workers Union, Local 304; Cole et al grievances*, October 22, 1979. Weatherill — 9 pages. (39)

Illegal strike — discipline not discriminatory; suspension confirmed. *Re George White & Sons Co. Limited and International Association of Machinists and Aerospace Workers, Local 2029; Mott grievance*, September 28, 1979. Majority: Brunner, Noonan — 8 pages; dissent: Wren — 4 pages. (40)

Insubordination: union steward suspended for holding a meeting without permission of his supervisor and refusing to obey order to return to his regular duties; grievance dismissed. *Re Block Drug Company (Canada) Limited and Canadian Chemical Workers Union, Local 35, Avery grievance*, September 28, 1979. Majority: O'Shea, Sergeant — 19 pages; dissent: McIlwain. (41)

Insubordination; use of offensive and profane language to supervisor — provocation by supervisor; lesser penalty substituted. *Re Carling O'Keefe Breweries of Canada Limited and Brewery Workers Local Union No. 325; Mullally grievance*, October 2, 1979. H.D. Brown — 10 pages. (42)

Work performance unsatisfactory — grievors bearing some responsibility for mistakes of work group; grievance dismissed. *Re Livingston Industries Limited and International Woodworkers of America, Local 2-167; Pottelberg and Verbrugge grievances*, October 31, 1979. Majority: Springate, Ronson — 8 pages; dissent: Smiley. (43)

Work performance unsatisfactory — nature and responsibilities of employment considered; suspension reduced. *Re North York General Hospital and Ontario Nurses' Association; Singh grievance*, October 10, 1979. Majority: Shime, Maguire — 27 pages; dissent: Paliare. (44)

Withdrawal of consent to work voluntary overtime — grievor acting on union steward's advice; suspension reduced to warning. *Re Alcan Canada Foils and Printing Specialties and Paper Products Union, Local 466; Cobb grievance*, October 18, 1979. Majority: Burkett, Winkler — 12 pages; concurring for different reasons: Geiger — 2 pages. (45)

Evidence

Admissibility; company seeking to adduce evidence available at time of discharge but not used — evidence not altering grounds for discharge; evidence admissible. *Re City Parking Holdings Limited and Service Employees Union, Local 204; Kontogiannopoulos grievance*, September 26, 1979. H.D. Brown, Wren, Mitchnick — 10 pages. (46)

Grievance Procedure

Timeliness — time limits directory; grievance arbitrable. *Re Network Transport Ontario Limited (York Cartage Service Limited) and Canadian Chemical Workers' Union; Irwin grievance*, October 9, 1979. Majority: O'Shea, Bost — 19 pages; dissent: Dean. (47)

Timeliness; notice to arbitrate three days late — extension under section 37(5a); grievance arbitrable. *Re Hill Refrigeration of Canada Limited and United Steelworkers of America, Local 6547; Hearn grievance*, October 4, 1979. H.D. Brown — 17 pages. (48)

Timeliness; union failing to nominate board member in time — extension under section 37(5a); grievance arbitrable. *Re Oshawa General Hospital and Canadian Union of Public Employees, Local 45; Cannons grievance*, September 18, 1979. Teplitsky, Martin, Dixon — 7 pages. (49)

Timeliness of grievance challenged — extension under section 37(5a), *The Labour Relations Act*, applied. *Re Pembroke General Hospital and Ontario Nurses' Association; policy grievance*, October 1, 1979. Majority: Abbott, Butler — 22 pages; dissent: Harnden — 2 pages. (50)

Written grievance misplaced — grievance arbitrable. *Re Norcom Leisure Products, Division of Norcom Homes Limited, and United Brotherhood of Carpenters and Joiners of America, Local 3189; White grievance*, September 26, 1979. R.J. Roberts — 6 pages. (51)

Holiday Pay

Accident benefits paid in respect of holiday — additional entitlement to holiday pay; grievance allowed. *Re Norcom Leisure Products, Division of Leisure Homes Limited, and United Brotherhood of Carpenters and Joiners of America, Local 3189; White grievance*. See (51), *supra*. (52)

Job Posting

Additional requirements to those contained in job description allowed. *Re Croydon Furniture Systems Inc., and United Steelworkers of America, Local 5019; Typhair grievance*, September 28, 1979. Curtis — 6 pages. (53)

Fairness — successful candidate given the opportunity to gain experience in an area to be judged in job competition; unfair advantage and discrimination; grievance allowed. *Re Public Utilities Commission (Sault Ste. Marie) and Canadian Union of Public Employees, Local 3; Euale grievance*, September 14, 1979. Majority: Fraser, Kozak — 11 pages; dissent: Grant — 2 pages. (54)

Supervisory position — job posting procedure not applicable; grievance denied. *Re Metropolitan Toronto, Municipality of, and Metropolitan Toronto Civic Employees' Union, Local 43; group grievance*, October 2, 1979. Majority: Gorsky, Murray — 13 pages; dissent: Weisbach — 2 pages. (55)

Job Vacancy

Existence of lead hand vacancy — temporary work without independent status; grievance dismissed. *Re Eldorado Nuclear Limited and United Steelworkers of America; Ashton grievance*, September 14, 1979. McLaren — 10 pages. (56)

Lay-off

Bumping rights; grievor transferred as a result of work force reduction — not directly affected; grievance dismissed. *Re Beach Appliances International Limited and United Automobile Workers; Leger grievance*, September 17, 1979. Fraser — 6 pages. (57)

Declaration of surplus and transfer — proper procedure not followed; grievance allowed. *Re Elgin County Board of Education and Ontario Secondary School Teachers' Federation District 35; Davidson grievance*, October 26, 1979. Majority: Kennedy, Walsh — 14 pages; dissent: Toutant — 1 page. (58)

Protracted lay-off giving rise to bumping rights — lay-off not protracted; grievance dismissed. *Re Canadian Appliance Manufacturing Company Limited and United Steelworkers of America, Local 2771; group grievance*, September 15, 1979. Stewart — 17 pages. (59)

Overtime

Consent to overtime work as required by *The Employment Standards Act* — consent to be given in clear and specific terms; grievances allowed. *Re Dashwood Industries Limited and International Brotherhood of Carpenters and Joiners of America, Local 3054*. See (27), *supra*. (60)*

Existence of overtime — casual employees performing work during regular work week — not overtime; grievance dismissed. *Re Multiply Plywoods Limited and Lumber and Sawmill Workers Union, Local 2693; Logan grievance*, September 25, 1979. Majority: H.D. Brown, Firman — 12 pages; dissent: Wren — 4 pages. (61)

Withdrawal of overtime offer by employer — withdrawal not justified; grievance allowed. *Re O & K Orenstein & Koppel Canada Limited and International Association of Machinists and Aerospace Workers, Local 1740; Stott grievance*, August 27, 1979. Majority: Teplitsky, Dobson — 6 pages; dissent: MacDermid. (62)

Probationary Employee

Extension of probationary period agreed to by union executive — grievor not entitled to grieve discharge. *Re Gates Rubber of Canada Limited and Local No. 733 United Rubber, Cork, Linoleum and Plastic Workers of America; MacDonald grievance*, October 9, 1979. Majority: H.D. Brown, Storie — 15 pages; dissent: Hoover — 2 pages. (63)

Procedure

Adjournments; employer failing to appear at hearing — adjournment not appropriate. *Re Queensbury Inn Enterprises Inc. and International Beverage Dispensers' and Bartenders' Union*. See (18), *supra*. (64)*

Promotion

Qualifications — ability and physical fitness relatively equal; grievance allowed in part. *Re Oshawa General Hospital and Canadian Union of Public Employees, Local 45; Cannons grievance*, September 18, 1979. Teplitsky, Martin, Dixon — 7 pages. (65)

Qualifications — grievor's qualifications not relatively equal; grievance dismissed. *Re Waterloo Metal Stampings Ltd. and United Steelworkers of America; Jiwa grievance*, October 9, 1979. Majority: O'Shea, Currey — 11 pages; dissent: Brooks. (66)

Qualifications — grievor not establishing that he had the immediate ability to perform; grievance dismissed. *Re Hill Refrigeration of Canada Limited and United Steelworkers of America, Local Union Number 6547; Hearn grievance*, October 4, 1979. H.D. Brown — 17 pages. (67)

Qualifications — not established; grievance denied. *Re North Centennial Manor and Canadian Union of Public Employees, Local 1214; Dallaire grievance*, October 25, 1979. Majority: Dunn, Rukavina — 8 pages; dissent: LeBel. (68)

Qualifications — qualifications not relatively equal; grievance dismissed. *Re Canadian Industries Limited, Cornwall Works and United Steelworkers of America, Local Union 13142; Fontaine grievance*, October 9, 1979. Majority: O'Shea, Healy — 12 pages; dissent: Taylor. (69)

Qualifications; formal educational requirement not met — equivalent qualifications not sufficient; grievance dismissed. *Re City of London, Corporation of, and Canadian Union of Public Employees, Local 101; Edwards grievance*, October 22, 1979. Majority: H.D. Brown, Noble — 15 pages; dissent: Richardson — 3 pages. (70)

Seniority

Bumping rights; agreement silent as to application of seniority to preferred shift — not considered as "bumping-up"; grievance allowed. *Re Dominion Stores Limited and Retail, Wholesale and Department Store Union, Local 41; group grievance*, October 19, 1979. Weatherill, Dahmer, White — 9 pages. (71)*

Commencement of seniority — facts supporting employer's determination of starting date; grievance dismissed. *Re Kelsey-Hayes Canada Limited and Amalgamated Plant Guards, Local 1958; Thompson grievance*, October 18, 1979. Linden — 7 pages. (72)

Severance Pay

Early retirement; collective agreement containing clause limiting severance pay to that receivable if grievor had remained at work until retirement — retiring employees not qualifying for severance pay; grievance dismissed. *Re Maple Leaf Mills Limited and Canadian Chemical Workers' Union, Local 18; Klemensiewicz grievance*, October 12, 1979. Majority: Weatherill, Healy — 11 pages; dissent: McIlwain. (73)*

Sick Leave

Interruption of employment relationship — previous accumulation lost; grievance dismissed. *Re Sudbury Board of Education and Ontario Secondary School Teachers' Federation; Roy grievance*, October 18, 1979. Linden — 5 pages. (74)

Sick Pay

Fee for medical certificate — collective agreement requiring company to pay “entire cost of weekly indemnity” including physician’s fee for completing form; grievance allowed. *Re Hawker Siddeley Canada Limited Orenda Division and International Association of Machinists and Aerospace Workers, Local Lodge 717 Turbo; McTaggart grievance*, September 30, 1979. Prichard — 17 pages. (75)*

Transfer

Employee assigned to perform same job in different work location — not a transfer requiring application of seniority provisions; grievance dismissed. *Re Ottawa Civic Hospital and Canadian Union of Public Employees, Local 576; Gaim grievance*, October 23, 1979. Majority: Carter, Rivet — 11 pages; dissent: Briginshaw — 2 pages. (76)*

Travel Allowance

Employees reporting directly to “remote” locations — not entitled to time and expense allowance as if they had first reported to main office; grievance dismissed. *Re Ontario Educational Communications Authority and National Association of Broadcast Employees and Technicians; policy grievance*, September 21, 1979. Palmer — 21 pages. (77)

Union Officials

Paid time-off for “time spent in grievances” — not including time spent at arbitration hearing as an advisor; grievance dismissed. *Re Little’s Nursing Home (Tecumseh) Limited and Service Employees’ Union, Local 210; DeYoung grievance*, August 16, 1979. Majority: Ellis, Docherty — 6 pages; dissent: McConville — 1 page. (78)*

Statements made at grievance meeting — statements privileged; immunity from disciplinary action; grievance allowed. *Re Overnite Express Limited and Association of Employees of Overnite Express Limited; Reynolds grievance*. See (21), *supra*. (79)

Vacation Pay

Commencement of increased benefits — increase commencing in next fiscal year; grievance dismissed. *Re Bundy of Canada Limited and United Automobile Workers, Local 1285; union grievance*, October 12, 1979. Brent — 7 pages. (80)

Vacations

Entitlement reduced by number of days taken in excess of previous year’s entitlement — set-off permissible; grievance dismissed. *Re Windsor Western Hospital Centre Inc. and Ontario Nurses’ Association; Doe and Thompson grievance*, undated award. Majority: Ianni, Bartlet — 11 pages; dissent: Richards — 9 pages. (81)*

Wages

Educational increment for completion of special course of not less than three months — course spanning three months but less than 90 calendar days; grievance upheld. *Re Leamington District Memorial Hospital and Ontario Nurses’ Association; group grievance*, September 28, 1979. Majority: H.D. Brown, Symes — 16 pages; dissent: Bartlet — 6 pages. (82)

Incentive rates; change in rates based on operation changes — no requirement to negotiate new standards; grievance dismissed. *Re ESB Canada Limited and International Union of Electrical, Radio and Machine Workers; union grievance*, October 22, 1979. Majority: Weatherill, Morley — 9 pages; dissent: Aslin — 3 pages. (83)

Progression; permanent transfer to different classification — wage progression to reflect experience in particular classification; grievance dismissed. *Re Dominion Stores Limited and Retail, Wholesale and Department Store Union, Local 414; group grievance*, October 19, 1979. Majority: Weatherill, White — 7 pages; dissent: Spaxman — 2 pages. (84)

Welfare Plans

Sick pay; extent of benefits — grievors on plan before wage increases to which benefits adjusted; grievance allowed in part. *Re Union Gas Limited and Canadian Chemical Workers Union, Local 6; group grievance*, September 28, 1979. Majority: H.D. Brown, Phelps — 12 pages; dissent: Punnett — 2 pages. (85)

Work Assignment

Assignment of secretary to purchase and/or serve coffee at meetings or for supervisor personally — grievance allowed in part. *Re York University and York University Staff Association; Dagis grievance*, September 19, 1979. Majority: Brunner, Swenarchuk — 12 pages; dissent: Binder — 5 pages; addendum: Brunner, Swenarchuk — 2 pages. (86)*

The following awards in interest arbitrations under *The Hospital Labour Disputes Arbitration Act* were also filed with the Office of Arbitration during the month of October, 1979.

Bobier Convalescent Home and London and District Service Workers Union, Local 220 (full-time and part-time), H.D. Brown, Walsh — 10 pages; dissent: Abrams — 1 page.

Cassellholme Home for the Aged, Board of Management of, (District of Nipissing East) and Canadian Union of Public Employees, Local 146, Davidson, Donnelly — 10 pages; dissent: Pharand.

County of Essex, Corporation of, (Sun Parlour Home) and Ontario Nurses' Association, Ord, Thrasher, Walsh — 6 pages.

Ottawa Civic Hospital and International Union of Operating Engineers, Local 796, O'Connor, Stewart, Ball — memorandum of settlement — 4 pages.

Ottawa West End Villa Limited and Canadian Union of Public Employees, Local 1307, Rubenstein, Brisbin, Walsh — 19 pages; addendum: Walsh — 1 page; supplement to addendum: Walsh — 1 page; addendum: Brisbin — 4 pages.

Participating Hospitals (54 in Number) and Canadian Union of Public Employees and its Local Unions, H.D. Brown — 25 pages; partial dissent: Switzman — 2 pages; partial dissent: Belford — 2 pages.

Peterborough Civic Hospital and International Union of Operating Engineers, Local 796, Samuels, Ball — 8 pages; concurring subject to comments: Smith — 1 page.

Pinehaven Nursing Home and London and District Service Workers Union, Local 220 (full-time and part-time in Waterloo), H.D. Brown, Tarasuk, Walsh — 26 pages; addendum: Walsh — 1 page.

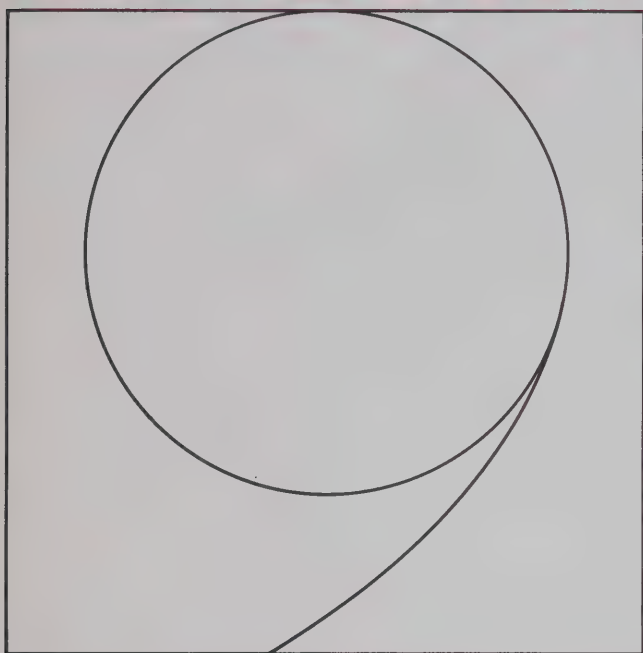
Rest Haven Nursing Home of St. Williams 1974 Limited and London and District Service Workers Union, Local 220 (part-time), R.J. Roberts, Switzman — 8 pages; dissent: Tovey — 1 page.

Rest Haven Nursing Home of St. Williams 1974 Limited and London and District Service Workers Union, Local 220 (full-time), R.J. Roberts, Switzman — 20 pages; dissent: Tovey — 3 pages; addendum: Switzman — 1 page.

Salvation Army Grace Hospital, Windsor and Canadian Union of Operating Engineers and General Workers, Local 100, Davidson, Burnell — 11 pages; minority report: Robinet — 2 pages.

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Monthly Bulletin



Office of Arbitration



Ontario

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T.E. Armstrong, QC, Deputy Minister

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In Memoriam

It is with regret that this Office has learned of the death, in December, 1979, of one of its approved arbitrators, W. Campbell Green. He will be missed from the ranks of arbitrators.

Arbitrators

The following persons have been added to the list of arbitrators presently available to handle interest disputes:

Mr. John A. Houston, 120 Widdicombe Hill Boulevard, Apartment 1403, Weston, Ontario, M9R 4A6; telephone (416) 241-4712.

Mr. Malcolm N. MacIver, 125 Hastings Avenue, Pointe Claire, Quebec, H9R 3P4; telephone (514) 697-1604, or 1533 Wilson Avenue, Apartment 109, Downsview, Ontario, M3M 1H1; telephone (416) 247-6747.

Change of Address and Telephone Numbers

The following changes should be noted, effective immediately:

Martin Teplitsky; telephone (416) 488-2542.

Professor Eugene H. Zimmerman, R.R.#1, Bolton, Ontario, LOP 1A0; telephone (416) 857-1576.

Awards

The following awards were filed with the Office of Arbitration during the month of November, 1979, under the *Labour Relations Act* as amended.

The summary was prepared at the Faculty of Law, Queen's University, under the supervision of C.G. Simmons, B.A., B.C.L., LL.M., and D.D. Carter, B.A., B.C.L., LL.B.

* Indicates award to be reported in full or in part in *Labour Arbitration Cases*.

Arbitrability

Settlement of prior grievance arising from same incident, but seeking different remedy — subsequent grievance raising same issues not arbitrable. *Re Stanley Works Limited and United Steelworkers of America, Local 3692; Patterson and Small grievance*, November 5, 1979. Majority: Brent, Baker — 16 pages; dissent: MacPherson. (1)

Bargaining Unit

Engineers excluded from clerical and technical bargaining unit — summer student doing work of engineer excluded. *Re Canadian Salt Company Limited and United Automobile Workers, Local 240; policy grievance*, October 26, 1979. Barton — 5 pages. (2)

Classification

Declassification — procedural irregularities resulting in unfair treatment: refusal to accept grievor's request to withdraw application for job review; grievance allowed. *Re Ontario Hydro and Society of Ontario Hydro Professional Engineers and Associates; Hart grievance*, November 27, 1979. Majority: H.D. Brown, Posen — 59 pages; dissent: McGee — 2 pages. (3)

Difference of experience, qualification and application of duties and responsibilities between two jobs; grievance dismissed. *Re Durham College and Ontario Public Service Employees' Union; Patterson grievance*, October 3, 1979. Majority: H.D. Brown, Clawson — 21 pages; dissent: Cochrane. (4)

Grievors found to be performing supervisory functions on weekends — rate of higher classification to be paid for this time; grievances allowed. *Re Toronto Star Limited and Toronto Newspaper Guild, Local 87; Gosine and Belanger grievances*, November 28, 1979. Kennedy, Tate, McGuire — 11 pages. (5)

Job duties falling within higher classification — grievance allowed. *Re Union Electric Supply Co. Limited and International Molders and Allied Workers Union, Local 28; Crewe grievance*, November 9, 1979. Burkett — 11 pages. (6)

Collective Agreement

Oral amendment to lay-off provisions — union not proving oral amendment; grievance denied. *Re Goldcrest Furniture Limited and Canadian Union of Industrial Employees, Local 1; policy grievance*, October 31, 1979. Majority: Bigelow, Werry — 4 pages; dissent: Swenarchuk — 2 pages. (7)

Retroactivity of entitlement of Quebec employees to payments in lieu of OHIP benefits provided to Ontario employees — no retroactivity; grievance dismissed. *Re Eastern Steelcasting and United Steelworkers of America; policy grievance*, November 7, 1979. Weatherill — 6 pages. (8)

Retroactivity; grievor quitting employment after ratification — entitled to retroactive pay; grievance allowed. *Re Alexander Centre Industries Limited and United Steelworkers of America, Local 7842; Fournier grievance*, October 23, 1979. Majority: O'Shea, Rouleau — 16 pages; dissent: McNamara — 2 pages. (9)

Discharge

Absence from work without permission — grievor having record of excessive absenteeism; lying to supervisor about reason for absence; grievance dismissed. *Re Alcan Canada Products Limited and United Steelworkers of America, Local 8754; Employee No. 260857 grievance*, October 19, 1979. O'Shea — 24 pages. (10)

Absenteeism — grievor unable to perform job without medical problems; grievance denied. *Re Gilbey Canada Limited and Brewery, Soft Drink, Distillery, Distributors and Miscellaneous Workers, Local 1000; Cousineau grievance*, November 23, 1979. Majority: H.D. Brown, Churchmuch — 20 pages; dissent: Heard — 1 page. (11)

Absenteeism — grievor refusing to justify an extended leave of absence; grievance dismissed. *Re Consumers Distributing Company Limited and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, Local 419; Saini grievance*, October 10, 1979. Majority: O'Connor, Werry — 12 pages; dissent: Cwitco — 4 pages. (12)

Abuse of patient alleged — injury caused by grievors' proper attempts to restrain patient's irrational conduct; grievances allowed. *Re Bestview Holdings Limited and Bestview Services Limited and Christian Labour Association of Canada; McCalla and Mykoo grievances*, November 28, 1979. O'Shea — 26 pages. (13)

Assault on fellow employees following provocation — factors to determine whether belligerent assault or less serious one considered; reinstatement without compensation. *Re Steel Company of Canada Limited, Hilton Works and United Steelworkers of America, Local Union No. 1005; Lalla grievance*, November 19, 1979. McLaren, O'Neal, Storie — 16 pages; addendum: O'Neal — 1 page. (14)

Assault upon supervisor off work premises — assault work-related; grievance dismissed. *Re Dome Mines Limited and United Steelworkers of America, Local 7580; Warford grievance*, November 9, 1979. Hinnegan, Gilmore, Hoffman — 6 pages; addendum: Hoffman — 1 page. (15)

Association likely to bring discredit, and inability to fulfil conditions of oath of secrecy — not established; grievance allowed. *Re Metropolitan Board of Commissioners of Police and Metropolitan Toronto Police Association; Pasquino grievance*, November 9, 1979. Teplitsky — 9 pages. (16)

Deemed quit if improper use of leave of absence — board having no authority to modify penalty; grievance dismissed. *Re Sudbury Nursing Homes Limited and Canadian Union of Public Employees, Local 1182; Geauvreau grievance*, November 27, 1979. Majority: Hinnegan, Brisbin — 10 pages; dissent: McVey. (17)

Dishonesty: falsification of production records — company has duty to act even handedly in discipline matters; grievance allowed in part; discharge reduced to thirty day suspension. *Re Bendix Automotive of Canada Ltd. and United Automobile Workers, Local 195; Stewart grievance*, November 7, 1979. Gorsky — 9 pages. (18)

Failure to notify supervisor of reasons for absence — sufficient indication of illness given to company; reinstatement without compensation. *Re Budd Automotive Company of Canada Limited and United Automobile Workers, Local 1451; anonymous grievance*, October 4, 1979. Shime — 11 pages. (19)*

Failure to properly perform work assigned — grievor's lack of maturity and experience considered; reinstatement without compensation and without seniority. *Re International Harvester Company of Canada Limited and United Automobile Workers, Local 127; Shaw grievance*, October 31, 1979. Willes — 6 pages. (20)

Failure to provide adequate medical certificate: employer not satisfied with certificate from employee's doctor pronouncing him fit to return to work — collective agreement provides that in case of dispute over certificate company doctor should consult with employee's doctor; company should have pursued this route; grievance allowed. *Re O & K Orenstein & Koppel Canada Limited and Local Lodge No. 1740 International Association of Machinists & Aerospace Workers; Zein grievance*, October 30, 1979. Teplitsky, Tate, MacDermid — 6 pages. (21)

Falsification of time card by supervisor — grievor's participation not substantiated; grievance allowed. *Re Allatt Limited and International Woodworkers of America; Ruffolo grievance*, November 27, 1979. Majority: Burkett, Alper — 10 pages; partial dissent: Meighen — 1 page. (22)

Improper conduct; unseemly relationships with passengers similar to previous incident; grievance dismissed. *Re London Transit Commission and Amalgamated Transit Union, Division 741; Laurencic grievance*, November 22, 1979. Majority: Hinnegan, Flinn — 6 pages; dissent: Austin. (23)

Impropriety — acceptance of gratuity from customer: company policy not specifically brought to attention of grievor; reinstatement without compensation. *Re McDonnell Douglas Canada Limited and United Automobile Workers, Local 673; Barclay grievance*, November 19, 1979. Palmer — 8 pages. (24)

Innocent absenteeism; grievor frequently absent for various personal and health reasons — no culminating incident required, but something must happen to give employer reason to think grievor's attendance will improve; grievance allowed. *Re Victoria Hospital and London and District Building Service Workers' Union, Local 220; Kechego grievance*, November 28, 1979. Majority: Weatherill, Switzman — 11 pages; dissent: Churchill-Smith — 5 pages. (25)*

Insubordination — grievor's use of a large thermos was not in breach of company rules; grievance allowed. *Re Dover Corporation (Canada) Limited, Turnbull Elevator Division and International Association of Machinists and Aerospace Workers, Local 1257; Foster grievance*, October 12, 1979. Majority: Brunner, Wren — 10 pages; dissent: Cook — 3 pages. (26)

Insubordination — imposition of lesser penalty on co-worker not a mitigating factor; grievance dismissed. *Re Cleanol Services and Warehousemen and Miscellaneous Drivers, Local 419, Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America; Conroy grievance*, October 25, 1979. Palmer — 13 pages. (27)

Insubordination; grievor refusing a direct order — grievor having previous record of discipline; discharge reduced to lengthy suspension. *Re U.A.W. Building Corporation, Local 1451 and Hotel and Restaurant Employees' & Bartenders' International Union, Local 756; Puttocks grievance*, November 27, 1979. O'Connor — 6 pages. (28)

Insubordination; refusal to work and leaving work without permission; penalty reduced to one-month suspension. *Re Inmont of Canada Limited and International Chemical Workers Union, Local 177; Woodall grievance*, November 7, 1979. Weatherill — 8 pages. (29)

Non-disciplinary discharge; innocent absenteeism cited — inability to attend regularly in future not established; grievance allowed. *Re Victoria Hospital Corporation and London and District Service Workers' Union, Local 220; Green grievance*, November 1, 1979. Majority: O'Shea, Mayne — 12 pages; dissent: Johnston. (30)

Possession of goods acquired by criminal offence — grievor in job permitting access to police information; grievance dismissed. *Re Hamilton-Wentworth Regional Board of Commissioners of Police and Hamilton-Wentworth Police Association; Romanowitch grievance*, November 5, 1979. Abbott — 30 pages. (31)*

Theft: grievor accused of stealing company property — explanation given to supervisor later found to be false; grievor's explanation at hearing not sufficiently credible to outweigh company's evidence; grievance dismissed. *Re Steel Company of Canada Limited, Canada Works and Local Union No. 3250, United Steelworkers of America; Blayney grievance*, November 26, 1979. Majority: H.D. Brown, Brady — 32 pages; dissent: Turk. (32)

Theft; grievor age 57 with 12 year unblemished work record — insufficient justification for reducing penalty; grievance dismissed. *Re Steel Company of Canada Limited and United Steelworkers of America, Local 1005; Bianchi grievance*, November 11, 1979. Majority: Rayner, Storie — 18 pages; dissent: DesRoches — 3 pages. (33)

Theft; premeditated theft of two cases of soft drinks; grievance dismissed. *Re Air Canada and International Association of Machinists and Aerospace Workers; Sowerby grievance*, October 2, 1979. Simmons — 11 pages. (34)

Unauthorized absence; proper notification to company not given — culminating incident; grievance dismissed. *Re BASF Canada Ltd. and Canadian Paperworkers Union, Local 775; Lepage grievance*, November 23, 1979. Hinnegan, Quaife, Bloom — 4 pages. (35)

Unsatisfactory work performance — inadequate warning to justify discharge; suspension substituted. *Re City of Toronto, Corporation of, and Canadian Union of Public Employees, Local 79; Colby grievance*, November 14, 1979. Majority: Springate, Tate — 23 pages; dissent: Paulin — 2 pages. (36)

Discipline

Absence without leave — grievor repeatedly not following posted work schedule; grievance dismissed. *Re Dominion Stores Limited and Retail, Wholesale and Department Store Union, Local 579; Fillator grievance*, November 1, 1979. Majority: Hinnegan, Churchmuch — 9 pages; dissent: Prudhomme. (37)

Absenteeism — employer's acceptance of grievor's justification determining whether an absence is blameworthy; grievance allowed in part. *Re Firestone Canada Limited and United Rubber, Cork, Linoleum and Plastic Workers of America, Local 113; Morris grievance*, November 23, 1979. Majority: O'Shea, Switzman — 17 pages; partial dissent: Filion — 2 pages. (38)

Breach of security rules — five-day suspension not unreasonable; grievance dismissed. *Re Brink's Canada Limited and Teamsters Local Union No. 419; Tessier grievance*, October 22, 1979. Palmer, Coley, Hurd — 7 pages. (39)

Drinking on the job — five-day suspension proper; grievance denied. *Re Engelhard Industries of Canada Limited and Federal Local 24529; Martyniuk grievance*, November 15, 1979. Rayner — 6 pages. (40)

Insubordination; grievors refusing to follow order requiring attendance at a "voluntary" training session; grievances dismissed. *Re Domtar Packaging Limited and Canadian Paperworkers Union, Local 595; Reashor, McCormack, Matthews grievances*, November 21, 1979. Majority: Linden, Byers — 8 pages; dissent: Weisbach — 2 pages. (41)

Insubordination; refusal to assist replacement — order not enforced against another employee; grievance allowed. *Re John T. Hepburn Limited and United Steelworkers of America, Local 3335; Dziabel grievance*, November 5, 1979. O'Shea, Nicol, Farrar — 10 pages. (42)

Insubordination; refusal to comply with supervisor's instructions — not intended as challenge to authority; grievance allowed. *Re Chateau Nursing Home and Service Employees International Union; Yee grievance*, November 5, 1979. Haladner, Dodge, Brisbin — 7 pages. (43)

Insubordination — verbal abuse of foreman: grievor's comments not constituting threat or challenge to authority; grievance allowed. *Re Coca-Cola Ltd. and Canadian Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers; Brownlee grievance*, November 5, 1979. Springate — 12 pages. (44)

Mistreatment of patient — behaviour not sufficiently serious to constitute culminating incident justifying taking past incidents into account; grievance allowed, warning substituted for suspension. *Re Waterloo, Regional Municipality of, (Sunnyside Home) and London and District Service Workers Union, Local 220; Murray grievance*, July 25, 1979. Ord, Switzman, Noble — 6 pages. (45)

Procedure — actual notice of discipline untimely; grievance allowed. *Re Essex Terminal Railway Company and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, Local 880; Jobin grievance*, October 26, 1979. Majority: Brent, Kobryn — 13 pages; dissent: Burnell — 5 pages. (46)

Refusal to meet with management in absence of shop steward — grievor justifiably but erroneously believing that meeting of disciplinary nature; grievance allowed. *Re Benson and Hedges (Canada) Limited and Bakery, Confectionary and Tobacco Workers' International Union, Local 325; Kerr grievance*, October 25, 1979. Majority: McCulloch, Tate — 13 pages; dissent: Mathews — 3 pages. (47)

Employment Status

Disabled grievor not working since 1975; removed from seniority list in 1977 — employment relationship not terminated; grievance arbitrable. *Re Benn Iron Foundry Limited and United Automobile Workers, Local 251; Verschoore grievance*, November 12, 1979. Brent — 12 pages. (48)

Holiday Pay

Eligibility; statutory holiday falling during sick leave — application of excused absence exception to requirement of qualifying number of days' work; grievances dismissed. *Re Port Colborne General Hospital and Ontario Nurses' Association; Bognar and Kereliuk grievances*, November 21, 1979. Majority: M.G. Picher, Howe — 14 pages; dissent: Angus. (49)

Employer requiring doctor's certificate if employee on sick leave on holiday; grievances allowed with compensation. *Re I-T-E Industries Limited and International Brotherhood of Electrical Workers, Local 1590; Speck and Kirin grievances*, November 6, 1979. Majority: J.L. Roberts, Cox — 10 pages; dissent: White — 2 pages. (50)

Qualifying days — failure to provide satisfactory reason for not working scheduled shift prior to holiday; grievance dismissed. *Re Kysor Industrial Corporation and United Automobile Workers Local 347; Richardson grievance*, October 29, 1979. O'Connor — 5 pages. (51)

Temporary lay-off at time of holiday — employment relationship not terminated by lay-off; holiday pay an earned benefit; grievance allowed. *Re Board of Education for the City of Toronto and Canadian Union of Public Employees, Local 134; group grievance*, November 8, 1979. Majority: Hinnegan, Millage — 7 pages; dissent: Gilmore — 3 pages. (52)

Job Evaluation

Downgrading of job — decision made in good faith; grievance dismissed. *Re St. Joseph's General Hospital (Peterborough) and Ontario Public Service Employees Union; Trude grievance*, October 31, 1979. Majority: Scott, Singer — 9 pages; dissent: Switzman. (53)

Job changes; employer improving efficiency requiring greater scrutiny without any increase in risk; grievance referred back to parties. *Re Borg Textiles Limited and Western Ontario Joint Board, Amalgamated Clothing and Textile Workers Union, Local 971; union grievance*, November 3, 1979. McCaughey — 5 pages. (54)

Job Postings

Entitlement to apply — acceptance of grievor's application not automatically transferring him to new department to permit application for another job posting within department; grievance dismissed. *Re Canadian Rock Salt Company Limited and United Automobile Workers, Local 195; Read grievance*, November 13, 1979. R.J. Roberts — 5 pages. (55)

Further qualification not found in job description imposed; Truszkowski grievance allowed. *Re Domtar Incorporated and Canadian Paperworkers Union, Local 595; Belanger and Truszkowski grievances*, November 7, 1979. Majority: O'Shea, Weisbach — 30 pages; dissent: Byers. (56)

Qualifications — grievor less qualified than successful candidate; grievance dismissed. *Re Consolidated-Bathurst Packaging Limited and International Woodworkers of America, Local 2-69; Tambeau grievance*, November 26, 1979. Majority: Dunn, Rogers — 3 pages; dissent: Schachter — 3 pages. (57)

Qualifications: ability to speak English insufficient evidence to determine reasonableness of requirement; trial period awarded; grievance allowed in part. *Re Certified Automotive Products, Limited and United Steelworkers of America; Russo grievance*, November 27, 1979. Baum — 12 pages. (58)

Job Vacancy

Existence of vacancy — redistribution of duties normally performed by classification; grievance dismissed. *Re Scarborough General Hospital and Ontario Nurses' Association; association grievance*, October 25, 1979. Majority: Brunner, Levis — 9 pages; dissent: Richards — 5 pages. (59)

Existence of vacancy; duties assigned part-time to higher-rated employee; grievance allowed. *Re Dominion Stores Limited and Retail, Wholesale and Department Store Union, Local 414; policy grievance*, November 15, 1979. Curtis, White, Dahmer — 6 pages. (60)

Lay-off

Bumping rights — employer having right to maintain production by keeping junior, experienced employee; grievance dismissed. *Re William Neilson Limited and Canadian Food and Allied Workers, District 15, chartered by Amalgamated Meat Cutters and Butcherworkmen of North America, on behalf of its Local P529A; Mauconda grievance*, November 9, 1979. Majority: O'Shea, Healy — 8 pages; dissent: Hand. (61)

Bumping rights; grievor claims right to bump into job in his classification but in other department — collective agreement gives company discretion to use either departmental or classification seniority; grievance dismissed. *Re Stephens-Adamson Division of Allis-Chalmers Canada Limited and United Steelworkers of America on behalf of its Local 15303; Martin grievance*, November 20, 1979. Palmer — 7 pages. (62)

Employees not given information or opportunity to consider alternate jobs; validity of general procedures upheld. *Re Niagara College of Applied Arts and Technology and Ontario Public Service Employees Union; union grievance*, November 16, 1979. Majority: Palmer, Wright — 15 pages; dissent: Kearney — 2 pages. (63)

Grievors bumping into lower classification jobs at lower rate of pay; grievors claim they should be paid at their old wage rate while performing lower classification jobs; grievance denied. *Re Simmons Limited and United Electrical, Radio and Machine Workers of America, Local 513; group grievance*, October 1, 1979. Majority: McIver, Grossman — 8 pages; did not concur: Lucas. (64)

Inability to perform work because of medical condition; grievance denied. *Re Interbake Foods Ltd. and American Federation of Grain Millers, Local 242; Paquette grievance*, November 1, 1979. Majority: J.L. Roberts, McGowan — 14 pages; dissent: Kobryn — 2 pages. (65)

No loss to grievor flowing from alleged breach; grievance dismissed. *Re Budd Automotive Company of Canada Limited and United Automobile Workers, Local 1451; Peers grievance*, November 15, 1979. Shime — 7 pages. (66)

Plant-wide seniority — grievor given position of most junior employee after objecting to lay-off; grievance dismissed. *Re Kleen Stik Products Limited and Canadian Paperworkers Union Local 308; Kalfadelis grievance*, November 23, 1979. Majority: Kennedy, Stringer — 5 pages; dissent: Weisbach — 1 page. (67)

Qualifications for bumping — onus on union to prove that grievor could fulfil job requirements after 10 day training period; burden not met; grievance dismissed. *Re Westinghouse Canada Limited and United Electrical, Radio & Machine Workers of America, Local 504; Bissett grievance*, August 8, 1979. Majority: J.L. Roberts, Kacur — 9 pages; dissent: Greenwood. (68)

Redundancy; employer establishing separate systems of seniority for English and French schools; grievance allowed with reinstatement and compensation. *Re Kapuskasing District R.C.S.S. Board and Ontario English Catholic Teachers' Association; Kuyntjes grievance*, November 21, 1979. Majority: M.G. Picher, Nelson — 8 pages; dissent: Tremblay — 2 pages. (69)

Refusal to perform struck work — not giving rise to lay-off; grievance allowed in part only. *Re Photo Engravers and Electrotypers Limited and Toronto Printing Pressmen and Assistants' Union Number 10; group grievance*, October 22, 1979. Majority: Shime, Dinsdale — 22 pages; dissent: Herman. (70)

Union representation not provided to assist grievors with bumping rights — grievors permitted to exercise bumping rights; grievances allowed. *Re Borough of Scarborough, Corporation of, and Scarborough Civic Employees' Union, Local 368 CUPE; Gosley and Dmytruk grievances*, November 20, 1979. O'Shea, Fagan, Sanderson — 11 pages. (71)

Overtime

Consent under *Employment Standards Act* required — collective agreement must be perfectly clear to constitute consent of employees' agent; grievance allowed. *Re Walker Exhausts and United Steelworkers of America, Local 2894; group grievance*, November 20, 1979. O'Shea — 16 pages. (72)*

Higher rate for emergency call-out — not "planned overtime"; grievance allowed. *Re Public Utilities Commission of the City of Kingston and International Brotherhood of Electrical Workers, Local 36; group grievance*, October 31, 1979. Majority: Simmons, Heslinga — 8 pages; dissent: Grant — 1 page. (73)

Wash up period occurring after the completion of shift — employees not under control and direction or at call of company; grievance dismissed. *Re Indalloy Division of Indal Limited and United Steelworkers of America on behalf of its Local 2729; Miniaci grievance*, November 19, 1979. Majority: Brandt, Filion — 10 pages; dissent: Hart. (74)

Work performed on statutory holiday — not constituting overtime; grievance dismissed. *Re Public Utilities Commission of the City of St. Thomas and International Brotherhood of Electrical Workers, Local 636; Nethercott grievance*, September 28, 1979. Majority: Rayner, Bertuzzi — 7 pages; dissent: VanDusen — 2 pages; addendum: Rayner — 1 page. (75)

Overtime Pay

Rescheduling of work — grievor not entitled to notice of change when he requests the change; grievance dismissed. *Re Burns Meat Limited and Canadian Food and Allied Workers' Union, Local P139; Amos grievance*, November 12, 1979. Majority: Kennedy, Dinsdale — 7 pages; dissent: Zimmerman — 6 pages. (76)

Pensions

Calculation of employer contribution to Ontario Municipal Retirement Systems — payments made pursuant to statutory obligation, such as Unemployment Insurance contributions, not "perquisites"; payments made voluntarily or as a result of negotiations "perquisites" where value of payment easily determinable; grievance allowed in part. *Re Board of Education for the City of Toronto and Local 1325 Canadian Union of Public Employees; union grievance*, April 18, 1978. Majority: Palmer, Millage — 11 pages; partial dissent: Sanderson — 2 pages. (77)

Promotion

Experience qualifications — not reasonably applied; grievor awarded position with compensation. *Re Children's Aid Society of Metropolitan Toronto and Staff Association of Children's Aid Society of Metropolitan Toronto; Barker grievance*, October 31, 1979. Majority: Adams, Ballantyne — 19 pages; dissent: Wright — 3 pages. (78)*

Meaning of promotion — job vacancy not a promotion for grievor; grievance dismissed. *Re Scarborough Centenary Hospital Association and Canadian Union of Public Employees, Local 1320; Dixon grievance*, November 15, 1979. Majority: McLaren, Shakes — 13 pages; dissent: Simon. (79)

Prejudgement by management; grievance allowed. *Re Soo and District of Algoma Credit Union Limited and Office and Professional Employees International Union, Local 214; unnamed grievor*, October 25, 1979. Lunney — 6 pages. (80)

Qualifications — not "sufficiently qualified" even though paper qualifications met; grievance dismissed. *Re Labatt's Limited and International Brewery Workers Union Local 304; Lee grievance*, November 12, 1979. Rayner — 9 pages. (81)

Seniority to govern where basic ability to perform the job; grievance allowed. *Re Stormont, Dundas and Glengarry Board of Education and Office and Professional Employees' Union, Local 483; Bissonnette grievance*, November 28, 1979. Abbott — 14 pages. (82)

Recall

Plant-wide seniority — grievor entitled to be recalled to different job classification; grievance allowed. *Re Foster Wheeler Limited and United Steelworkers of America, Local 6519; Barrow grievance*, October 31, 1979. H.D. Brown — 15 pages. (83)*

Reporting Pay

Employees requested to stay after reporting — entitled to reporting allowance even though not payable otherwise; grievances allowed. *Re Kelsey-Hayes Canada Limited and United Automobile Workers' Union, Local 636; Monette and Knapp grievances*, November 1, 1979. Palmer — 6 pages. (84)*

Entitlement; plant closed due to snow storm — reasonable efforts to inform grievor not made; grievance allowed. *Re Somerville Belkin Industries Limited and Canadian Chemical Workers' Union, Local 30; Jackson grievance*, October 1, 1979. Palmer, Wohl, Morley — 12 pages; addendum: Morley — 1 page. (85)

Snow storm resulting in shutdown of plant — circumstances beyond control of company; grievance denied. *Re Electrohome Limited and International Brotherhood of Electrical Workers, Local 2345; group grievance*, November 16, 1979. O'Shea, Wacheski, Boehmer — 12 pages. (86)

Retirement

Compulsory retirement at 65 included in collective agreement by reference to pension plan — company's discretion to extend in absence of bad faith; grievance dismissed. *Re Genstar Chemical Limited and Canadian Chemical Workers Union Local 33; Carson grievance*, November 13, 1979. Majority: Hinnegan, McGee — 5 pages; dissent: Pratt. (87)

Scheduling of Work

Change of shift schedule — resulting from staff reduction; grievance dismissed. *Re Air Canada and Canadian Airline Employees Association; Jacobi grievance*, November 14, 1979. H.D. Brown — 11 pages. (88)

Employer changing hours of work to facilitate entry and exit of non-striking employees through picket line — change contrary to collective agreement; grievance allowed. *Re Boise Cascade Canada Limited and International Association of Machinists and Aerospace Workers, Local 490; union grievance*, November 12, 1979. Kennedy — 11 pages. (89)

Reduced teaching load for department heads eliminated; grievance dismissed. *Re Sault Ste. Marie Board of Education and Ontario Secondary School Teachers Federation; union grievance*, October 16, 1979. Majority: Palmer, Stewart — 12 pages; dissent: Tirrell. (90)*

Relief work for part-time employees — seniority to be applied over reasonable period of time; grievance dismissed. *Re Dominion Stores Limited and United Steelworkers of America; Penny grievance*, October 29, 1979. Brandt — 9 pages. (91)

Schedule change during grievor's vacation — reasonable attempts to notify grievor; grievance dismissed. *Re Dominion Stores Limited and Retail, Wholesale and Department Store Union, Local 414; Friedman grievance*, October 30, 1979. Majority: Rayner, White — 7 pages; dissent: Spaxman — 1 page. (92)

Shift schedules; grievor alleging that sufficient staff available to trigger requested rotation in collective agreement — grievance dismissed. *Re Dominion Stores Limited and Retail, Wholesale and Department Store Union, Local 414; McIndoo grievance*, October 31, 1979. Majority: H.D. Brown, Sargeant — 7 pages; dissent: Dahmer. (93)

Unfairness alleged — not established; grievance dismissed. *Re Hiram Walker and Sons Limited and Canadian Union of Operating Engineers and General Workers, Local 100; policy grievance*, November 14, 1979. Brent — 10 pages. (94)*

Seniority

Calculation where return to bargaining unit; past credit for prior service in bargaining unit — bargaining unit existing prior to certification; grievance dismissed. *Re Budd Canada Incorporated and United Automobile Workers, Local 1451; union grievance*, November 14, 1979. O'Shea — 13 pages. (95)

Temporary promotion provision — seniority not used in selecting employees to perform duties of superior position; grievance dismissed. *Re City of North York, Corporation of, and North York Civic Employees Union Local 94 Canadian Union of Public Employees; Gallant grievance*, November 20, 1979. Shime — 8 pages. (96)

Separation Allowance

Unused vacation and statutory holidays — entitlement to all statutory holidays vested at beginning of year; grievance allowed in part. *Re Board of Police Commissioners for the City of Brantford and Brantford Police Association; McLaughlin grievance*, November 13, 1979. McLaren — 13 pages. (97)

Sick Pay

Continuing illness but grievor still able to work — inability to work required; grievance dismissed. *Re Bell Canada and Communications Workers of Canada; Herbert grievance*, November 23, 1979. Majority: Burkett, Healy — 11 pages; dissent: Walsh — 4 pages. (98)

Stand-by Pay

Work stoppage because of apprehended safety hazard — not established that grievors unable to work for "reasons beyond their control"; grievance dismissed. *Re E.B. Eddy Forest Products Limited and Lumber and Sawmill Workers' Union, Local 2693; group grievance*, September 30, 1979. Majority: Simmons, Noonan — 9 pages; dissent: Wren — 4 pages. (99)*

Supplemental Unemployment Benefits

Lay-off resulting from act of God — only those employees reporting for work the day of the tornado, not all those scheduled to work, entitled to payments; grievance denied. *Re Standard Tube Canada Limited and United Automobile Workers, Local 636; group grievance*, November 7, 1979. O'Shea — 9 pages. (100)

Transfer

Lateral transfer contrary to wishes of employee — manner of transfer unfair; grievance allowed. *Re Mississauga Hydro-Electrical Commission and Local Union 636 of International Brotherhood of Electrical Workers; Ryan grievance*, October 24, 1979. Rayner, Heslinga, Stacey — 10 pages. (101)*

Union Rights

Access to shop floor — declaration as to extent of union's rights. *Re Toronto Dress and Sportswear Manufacturers Guild Incorporated and International Ladies' Garment Workers' Union, Locals 72-192-199; union grievance*, November 20, 1979. Arthurs — 10 pages. (102)*

Vacation Pay

Calculation — previously paid vacation pay to be included in earnings; grievance allowed. *Re Silverwood Dairies Limited (London) and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, Local 647; Corsaut grievance*, October 24, 1979. McLaren — 6 pages. (103)

Calculation where legal strike — employees on leave of absence during strike having no greater rights than striking employees under the settlement; grievance dismissed. *Re DeHavilland Aircraft of Canada Limited and United Automobile Workers, Local 673; Solosky grievance*, November 6, 1979. Rayner — 8 pages. (104)

Vacations

Entitlement — changes under recent collective agreement could not take effect in the middle of current calendar year; grievance dismissed. *Re DRG Packaging and Printing Specialties and Paper Products Union, Local 466; union grievance*, November 29, 1979. Majority: Adams, Dinsdale — 9 pages; dissent: Tate — 3 pages. (105)

Notice that one-week lay-off to precede vacation shut-down unless further notice to contrary — not a violation of vacation procedure; grievance dismissed. *Re Long Manufacturing Division Borg-Warner (Canada) Limited and International Association of Machinists and Aerospace Workers Local 2330; union grievance*, November 1, 1979. Hinnegan, Jardine, Boehmer — 7 pages. (106)

Scheduling — third week not to be unilaterally and arbitrarily scheduled; grievance allowed. *Re Budd Automotive Company of Canada and United Automobile Workers, Local 1451; union grievance*, November 15, 1979. Shime — 8 pages. (107)

Wages

Appropriate rate for people in acting capacities — method of calculation; first branch of grievance allowed. *Re City of Sarnia, Corporation of, and Sarnia Professional Fire Fighters' Association; union grievance*, November 19, 1979. Shime — 13 pages. (108)

Incentive rates — collective agreement requiring 5% change in tasks performed before retiming; grievance denied. *Re Consolidated-Bathurst Packaging Limited and International Packaging Limited and International Woodworkers of America, Local 2-69; group grievance*, October 10, 1979. Majority: Ellis, Rogers — 17 pages; dissent: Facey. (109)

Leadman rate where two leadmen working together — failure to designate leadman; grievance allowed. *Re Mississauga Hydro Commission and International Brotherhood of Electrical Workers; Winslow grievance*, November 8, 1979. Rayner, Heslinga, Gregory — 11 pages. (110)

Rates for new classifications disputed — grievance allowed in part. *Re Windsor Raceway Holdings Limited and Windsor Raceway Union; union grievance*, October 18, 1979. Majority: Palmer, Bartlet — 10 pages; partial dissent: Janisse. (111)

Welfare Plans

Commencement of benefits — past practice accepted as making benefits effective only after a trial period; grievance dismissed. *Re Canadian Salt Company Limited and United Automobile Workers, Local 240; policy grievance*, November 20, 1979. Fox — 10 pages. (112)

Work Assignment

Certain bargaining unit work assigned to employees outside unit — amount of time such functions performed canvassed; grievance denied. *Re Holiday Inn of Don Valley of Commonwealth Holiday Inns of Canada Limited and Hotel and Restaurant Employees' and Bartenders' International Union, Local 299; policy grievance*, November 26, 1979. Majority: Adams, Jenkins — 13 pages; dissent: Tate — 2 pages. (113)

Foreman assigned to do bargaining unit work from time to time — no contrary provision in collective agreement; grievance dismissed. *Re Battenfeld Grease (Canada) Ltd. and Oil, Chemical and Atomic Workers International Union; policy grievance*, October 22, 1979. Teplitsky, Edwards, Sargeant — 5 pages; addendum: Sargeant — 1 page. (114)

Teaching assignment other than particular subject area for which grievor hired — reassignment not motivated by prejudice; grievance dismissed. *Re Ontario Council of Regents for Colleges of Applied Arts and Technology, Northern College and Ontario Public Service Employees' Union; Toor grievance*, November 23, 1979. Kennedy, Cochrane, Gretton — 14 pages. (115)

Temporary assignment to speed task; other employee assigned to perform the rest of grievor's regular duties until report finished — no evidence that employer attempting to undermine bargaining unit; grievance dismissed. *Re Canadian Salt Company Limited and United Automobile Workers, Local 240; Karlsen grievance*, August 31, 1979. Simmons — 6 pages. (116)

The following awards in interest arbitrations under the *Hospital Labour Disputes Arbitration Act* were also filed with the Office of Arbitration during the month of November, 1979.

Beacon Hill Lodge (Ottawa) and Ontario Nurses' Association, Brown, Angus — 12 pages; dissent: Perkins — 7 pages.

Good Samaritan Nursing Home and Canadian Union of Public Employees, Local 2250, Davidson, Gilmore — 14 pages; dissent: Lewis — 6 pages; addendum: Davidson — 1 page.

Religious Hospitallers of St. Joseph of Villa Maria, Windsor and Service Employees' International Union, Local 210; Brent, Burnell — 13 pages; dissent: Hughes — 1 page.

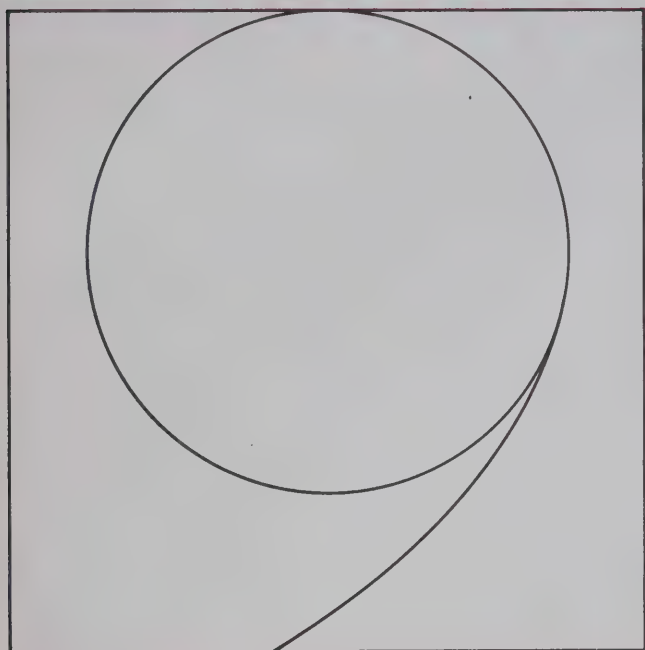
Renfrew, Corporation of the County of, (Bonnechere Manor) and Ontario Nurses' Association, Fraser, Walsh, Black — 21 pages; addendum: Walsh — 1 page.

Victoria Hospital Corporation and Office and Professional Employees International Union, Local 468, Saltman, Beaulieu, Billings — 15 pages.

Willson Nursing Home Limited and London and District Service Workers' Union Local 220, Ord — 9 pages; dissent in part: Walsh — 1 page; letter of intent — 2 pages; dissent: Perkins — 7 pages.

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Appointment of Arbitrators

Forms for requests for appointment of arbitrator under Section 37a of the *Labour Relations Act* are available on request, from the Office of Arbitration.

Awards

The following awards were filed with the Office of Arbitration during the month of December, 1979, under the *Labour Relations Act* as amended.

The summary was prepared at the Faculty of Law, Queen's University, under the supervision of C.G. Simmons, B.A., B.C.L., LL.M., and D.D. Carter, B.A., B.C.L., LL.B.

* Indicates award to be reported in full or in part in *Labour Arbitration Cases*.

Arbitrability

Failure of employer to discipline fellow employee—no breach of collective agreement established; grievance dismissed. *Re Stanley Works Ltd. and International Association of Machinists and Aerospace Workers, Local 1226; Mensch grievance*, December 11, 1979. Hinnegan, Jardine, Baker—8 pages. (1)*

Inequitable teaching assignment grievances to be referred to internal committee—grievances unsettled by committee arbitrable. *Re Centennial College and Ontario Public Service Employees Union; Golemba grievance*, December 10, 1979. Interim award: Majority: Weatherill, Cochrane—11 pages; dissent: McGivney—3 pages. (2)

Bargaining Unit

Disputed classification—classification not shown to perform same duties as those under collective agreement; grievance dismissed. *Re Skyline Hotels Limited and Hotels, Clubs, Restaurants, Taverns Employees Union, Local 261, Ottawa; union grievance*, December 3, 1979. Curtis, Robichaud, Healy—5 pages. (3)

Classification

Changes in job content—analysis of job's requirements and relative worth in terms of factors set out in collective agreement; grievance dismissed. *Re Haley Industries Limited and United Steelworkers of America, Local 4820; policy grievance*, December 17, 1979. Majority: Weatherill, Healy—13 pages; dissent: Taylor—1 page. (4)

Creation of new classification—management having right to create new job; grievance dismissed. *Re ITT Cannon Electric Canada and United Automobile Workers, Local 1090; policy grievance*, December 5, 1979. Majority: Hinnegan, Furlong—9 pages; dissent: Green—10 pages. (5)*

Verbal agreement alleged—verbal agreement cannot alter collective agreement setting classifications; no change in content of related job; grievance dismissed. *Re Canadian Appliance Manufacturing Company and United Steelworkers of America, Local 3129; union grievance*, December 2, 1979. O'Shea—17 pages. (6)

Damages

Minutes of settlement—parties intending what would have been obtained if grievance had succeeded. *Re Kingston General Hospital and Ontario Nurses' Association; Runions grievance*, November 7, 1979. Majority: Abbott, Bentley—7 pages; dissent: Herman—1 page. (7)

Demotion

Disciplinary demotion of unlimited duration—appropriateness when grievor capable of performing job; grievor reinstated with compensation. *Re Dow Chemical of Canada Limited and Printing Specialties and Products Union, Local 466; Sim grievance*, December 14, 1979. Majority: Brent, Tate—10 pages; dissent: Baldwin. (8)*

Inability or unwillingness to meet required standard of care—grievor's accident frequency endangering his own safety; grievance dismissed. *Re Kralinator Fitters Division and United Steelworkers of America, Local 4604; Abiad grievance*, December 17, 1979. Hinnegan—6 pages. (9)

Discharge

Absence for five days without satisfactory explanation—grievor losing seniority; grievance dismissed. *Re Lake Ontario Steel Company Limited and United Steelworkers of America, Local 6571; Cummings grievance*, December 14, 1979. O'Shea—17 pages. (10)

Abuse of breaks and abusive and threatening language to supervisor—culminating incident; grievance dismissed. *Re Westinghouse Canada Limited and United Steelworkers of America, Local 14193; Dawe grievance*, December 5, 1979. Majority: O'Shea, Kacur—15 pages; dissent: Curtis—2 pages. (11)

Abusive language and challenge to authority—mitigating factors considered; suspension substituted. *Re Falconbridge Copper Limited, Operator, Sturgeon Lake Joint Venture and Sudbury Mine, Mill and Smelter Workers Union, Sturgeon Lake Section; Findlayson grievance*, December 10, 1979. H.D. Brown—9 pages. (12)

Assault on fellow employee—provocation and mitigating circumstances; suspension substituted. *Re Lever Detergents Limited and Teamsters Chemical, Energy and Allied Workers Union, Local 132; French grievance*, December 4, 1979. Kennedy, Clawson, Phillips—8 pages. (13)

Assault upon foreman—survey of mitigating factors; grievance dismissed. *Re Kanmet Limited and International Molders' and Allied Workers' Union, Local 194; MacPherson grievance*, December 6, 1979. Hinnegan—11 pages. (14)

Attempted theft—grievor apprehended in process of stealing company property; grievance dismissed. *Re Highway Trailers of Canada Limited and International Molders' and Allied Workers' Union, Local 28; Ginn grievance*, December 14, 1979. Springate—14 pages. (15)

Careless workmanship; culminating incident claimed—allegations not substantiated; grievance dismissed. *Re Fleet Industries and International Association of Machinists and Aerospace Workers, Local 171; Sprentall grievance*, November 15, 1979. Majority: Dunn, Wren—6 pages; dissent: Marchand—5 pages. (16)

Disability—grievor capable of performing work duties notwithstanding risk of aggravating back problem; grievance allowed. *Re Queensway General Hospital Association and Ontario Nurses' Association; Sprogis grievance*, November 30, 1979. Majority: H.D. Brown, Roland—22 pages; dissent: Whittaker—6 pages. (17)*

Failure to report for work—employer required to give proper notice of recall for employee on lay-off status; grievance allowed. *Re General Hospital of Port Arthur and Service Employees' International Union, Local 268; Biscardi grievance*, December 6, 1979. Kennedy—16 pages. (18)

Failure to return to work after leave of absence—failure to provide adequate reasons; grievance dismissed. *Re Standard Induction Castings Limited and United Automobile Workers, Local 195; Vitorino grievance*, December 3, 1979. Brent—24 pages. (19)

Inability to perform work—medical evidence justifying termination; grievance dismissed. *Re Kapuskasing, Corporation of the Town of, and Canadian Union of Public Employees, Local 369; Guenette grievance*, December 27, 1979. Majority: Dunn, Brillinger—4 pages; dissent: Ouellette. (20)

Incapacity to perform alternative jobs following industrial accident—all reasonable efforts made; grievance dismissed. *Re Hayes—Dana Incorporated and United Automobile Workers, Local 676; Maletta grievance*, December 12, 1979. O'Shea—19 pages. (21)

Incompetence alleged—no corrective discipline applied by employer before discharge; suspensions substituted. *Re Campeau Corporation and Canadian Construction, Building Maintenance and General Workers' Union; Pion and Levasseur grievances*, October 24, 1979. Majority: Roach, Joyal—10 pages; dissent: MacDermid—8 pages. (22)

Insubordination; grievor taking vacation despite employer's refusal—suspension substituted. *Re Kleen Stik Products Limited and Canadian Paperworkers Union, Local 308; Marchment grievance*, December 3, 1979. Teplitsky, Weisbach, Brisbin—4 pages. (23)

Misrepresentation of physical condition—evidence insufficient to establish fraud on grievor's part; grievance allowed. *Re Budd Canada Incorporated and United Automobile Workers, Local 1451; Brostenants grievance*, December 10, 1979. Weatherill—7 pages. (24)

Physical disability—grievor able to perform work assigned; grievance allowed. *Re Gould Manufacturing of Canada Limited and International Association of Machinists and Aerospace Workers, Local 1975; Duwyn grievance*, November 30, 1979. Teplitsky, Carter, Hamilton—7 pages. (25)

Racial slur alleged—not proven sufficiently; grievance allowed. *Re Sherway Inn and Hotel and Club Employees' Union, Local 299; Grougiannis grievance*, December 3, 1979. Majority: McCulloch, Tate—11 pages; did not concur: Frenkell. (26)

Sexual harassment of student alleged—unsolicited sexual advances established; grievance dismissed. *Re University of Ottawa and Association of Professors of University of Ottawa; Strickler grievance*, November 29, 1979. Majority: O'Shea, Williams—115 pages; partial dissent: Bowen—37 pages. (27)

Theft—allegation not established but violation of employee purchase policy; suspension substituted. *Re Dominion Stores Limited and Retail, Wholesale and Department Store Union, Local 414; Allison grievance*, November 30, 1979. Majority: H.D. Brown, Spaxman—18 pages; dissent: White—3 pages. (28)

Theft alleged; grievor in possession of goods—grievance allowed with reinstatement and compensation. *Re International Harvester Canada Limited and United Steelworkers of America, Local 2868; Alfaro grievance*, November 26, 1979. Majority: Ellis, MacPherson—14 pages; dissent: Harris. (29)

Theft: grievor accused of being in possession of stolen company property—evidence insufficient to implicate grievor in theft of most of the items in question, but grievor found to improperly be in possession of two items of insignificant value; infraction not serious enough to warrant discharge; employees have no duty to inform on fellow employees guilty of theft; two week suspension substituted. *Re Air Canada and International Association of Machinists and Aerospace Workers; Brewster grievance*, December 11, 1979. Arthurs—20 pages. (30)*

Unauthorized absence in excess of three days justifying termination—absence for three days not sufficient; grievance allowed. *Re Dominion Stores Limited and Retail, Wholesale and Department Store Union, Local 414; Belanger grievance*, November 28, 1979. Hinnegan, Spaxman, White—7 pages. (31)

Unsatisfactory work performance over two month period—previous work record good; discharge too severe; grievor reinstated with three month suspension and no compensation. *Re Belleville, Municipal Corporation of City of, and Canadian Union of Public Employees, Local 140; Best grievance*, December 5, 1979. Shime, Wrightman, Sanderson—8 pages. (32)

Wilful neglect of duty alleged—actual instructions to grievor not established with sufficient certainty; grievance allowed. *Re Kapuskasing, Corporation of Town of, and Canadian Union of Public Employees, Local 369; Jacques grievance*, December 27, 1979. Majority: Dunn, Ouellette—6 pages; dissent: Brillinger—5 pages. (33)

Discipline

Absenteeism—innocent absenteeism not sufficient to merit disciplinary action; grievance allowed. *Re R.J. Simpson Manufacturing Company (Canada) Limited and United Automobile Workers, Local 1738; Liberty grievance*, December 7, 1979. Brent—8 pages. (34)

Abusive language and threatening conduct alleged—improper language but conduct not threatening; grievance allowed in part. *Re Kaiser Aluminum and Chemical of Canada Limited and United Steelworkers of America, Local 4885; Dawkins grievance*, December 5, 1979. Shime—14 pages. (35)

Altercation between employees; both suspended—onus on company to show just cause regarding employee who reported incident; grievance allowed. *Re Steel Company of Canada Limited, Hilton Works, and United Steelworkers of America, Local 1005; Trampe grievance*, December 13, 1979. Delisle, Davis, Baker—7 pages. (36)

Docking of pay for lateness—informal agreement about starting times upheld; grievance dismissed. *Re Steel Company of Canada Limited and United Steelworkers of America, Local 1005; Battrick grievance*, November 30, 1979. Beck, Stone, MacPherson—5 pages. (37)

Failure to report absence—grievor oversleeping: reasonableness of employer's regulations and suspension; grievance denied. *Re Electrohome Limited and International Brotherhood of Electrical Workers, Local 2345; Powell grievance*, December 19, 1979. Majority: Hinnegan, Boehmer—9 pages; dissent: Fisher—2 pages. (38).

Insubordination—excessive delay in complying with supervisor's instructions tantamount to refusal; grievance dismissed. *Re Firestone Steel Products of Canada and United Automobile Workers, Local 27; Calderozzi grievance*, December 17, 1979. Saltman—11 pages. (39)

Insubordination; failure to follow instructions and alleged obscenity to supervisor—grievance dismissed. *Re Continental Group of Canada Limited and Canadian Paperworkers Union; McPherson grievance*, December 7, 1979. Majority: Kennedy, Rogers—7 pages; dissent: Ortlieb—1 page. (40)

Insubordination; grievor abusive of foreman in circumstances where both to blame—grievance dismissed. *Re Monarch Fine Foods Company Limited and Milk and Bread Drivers, Dairy Employees, Caterers and Allied Employees, Local 647; Jones grievance*, November 28, 1979. Majority: Teplitsky, MacDonald—five pages; did not concur: Thomson. (41)

Leaving work early—grievor failing to get management permission; grievance dismissed. *Re Durham, Regional Municipality of, and Canadian Union of Public Employees, Local 1764; Kitzov grievance*, November 30, 1979. Majority: Hinnegan, von Veh—5 pages; partial dissent: Millage—1 page. (42)

Unjustified absence; grievor returning home on cold night rather than walking in to plant when transportation not available at gate—grievance dismissed. *Re Steel Company of Canada, Hilton Works, and United Steelworkers of America, Local 1005; Reaper grievance*, November 28, 1979. Majority: Beck, Gray—12 pages; dissent: Davis. (43)

Employment Status

"Part-time" employees—"pre-booking" scheme of arranging working hours not entitling part-time employees to be classified as "regular": employees retaining right to refuse or cancel tours of duty; grievance dismissed. *Re Victoria Hospital Corporation and Ontario Nurses' Association; policy grievance*, October 6, 1979. Majority: Beatty, Paulin—15 pages; dissent: Ryder—3 pages. (44)

Evidence

Extrinsic evidence—no ambiguity and estoppel not applicable; extrinsic evidence not admissible. *Re Victoria Hospital Corporation and Ontario Nurses' Association; group grievance*, October 31, 1979. Majority: H.D. Brown, Churchill-Smith—13 pages; dissent: Angus—2 pages. (45)

Grievance Procedure

Timeliness; extension under s. 37(5a)—prejudice not substantial; time limits extended. *Re Standard Induction Castings Limited and United Automobile Workers, Local 195; Vitorino grievance*, (19) *supra*. (46)

Timeliness; improper filling of job vacancy alleged—circumstances giving rise to grievance falling within time limits; grievance arbitrable. *Re ITT Industries of Canada Limited and United Steelworkers of America, Local 6340; Raso grievance*, December 7, 1979. Weatherill—8 pages. (47)

Holiday Pay

Sick leave coinciding with holiday—not entitled to holiday pay in addition to sick leave benefits; grievance dismissed. *Re Steinberg Incorporated and Teamsters Union, Local 419; group grievance*, December 21, 1979. Weatherill—9 pages; partial dissent: Burke—1 page; dissent: White—1 page. (48)

Job Postings

Job description—notice adequately specifying the particular job available; grievance dismissed. *Re General Foods Limited and Canadian Food and Allied Workers, Local P-1230; union grievance*, December 6, 1979. Majority: Kennedy, Wakely—8 pages; dissent: Leahy. (49)

Job Vacancy

Elimination of job—no provision requiring company to maintain all classifications; grievance dismissed. *Re Somerville Belkin Industries Limited and Canadian Chemical Workers' Union Local 30; policy grievance*, December 5, 1979. Majority: Kennedy, Morley—8 pages; dissent: Wohl. (50).

New position filled by employee simultaneously laid off from another production line: transfer permissible—no vacancy created; grievance dismissed. *Re Beach Appliances International Ltd. and United Automobile Workers, Local 641; policy grievance*, November 29, 1979. McCaughey—6 pages. (51)

Lay-off

Bumping rights—grievor able to perform job requested in an efficient manner; grievance allowed. *Re Budd Canada Inc. and United Automobile Workers, Local 1451; Gruen grievance*, December 6, 1979. Weatherill—8 pages. (52)

Bumping rights—grievor properly laid off where unable to bump into other classification; grievance dismissed. *Re Huron County Board of Education and Huron Secondary School Teachers' Federation, Local 45; Pratt grievance*, December 5, 1979. Teplitsky, Knott, Riddell—4 pages. (53)

Reclassification of grievor into former position five levels below his job at time of reduction because of reduction of work force—bumping rights applicable; grievance allowed. *Re Sudbury, Regional Municipality of, and Canadian Union of Public Employees, Local 207; Gauvin grievance*, November 28, 1979. H.D. Brown, McVey, Baker—10 pages. (54)

Promotion

Probationary period—grievor with basic qualifications entitled to probationary period under collective agreement; grievance allowed. *Re Ontario New Democratic Caucus and Office and Professional Employees International Union, Local 343; Skopyk grievance*, December 10, 1979. Shime—12 pages. (55)

Qualifications—employer disregarding certain relevant information and not sufficiently investigating grievor's ability in another area; grievance allowed. *Re University Hospital and London and District Service Workers' Union, Local 220; Navickas grievance*, December 3, 1979. Majority: Brandt, Switzman—14 pages; dissent: Fillion—2 pages. (56)*

Scheduling of Work

Cancellation of scheduled holiday work—employer properly exercised its management rights; grievance dismissed. *Re Perley Hospital and Canadian Union of Public Employees, Local 870; Mulligan grievance*, December 14, 1979.

Majority: Curtis, Stansel—5 pages; did not concur: Arsenault. (57)

Rescheduling of shift—detrimental reliance not shown in fact nor sufficient in law to affect management rights under collective agreement; grievance dismissed. *Re Labatt's Limited and Canadian Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers; group grievance*, November 29, 1979. Arthurs—9 pages. (58)*

Shift assignments; collective agreement giving full-time employees preference in regards to available work—not extending to give full-time employees their shift preference; grievance denied. *Re Loblaw's Limited and Retail Clerks Union, Local 206; policy grievance*, November 15, 1979. Delisle—5 pages. (59)

Seniority

Calculation—seniority to be measured from date of hiring rather than from date of first collective agreement; grievance allowed. *Re Christie Park Nursing Homes Ltd. and Service Employees Union, Local 204; policy grievance*, December 12, 1979. Teplitsky—3 pages. (60)

"Individual store basis"—extent of seniority rights; grievance allowed partially. *Re Dominion Stores Limited and Retail, Wholesale and Department Store Union, Local 414; group grievance*, December 14, 1979. Weatherill, Spaxman, White—7 pages; addendum: White—1 page. (61)

Severance Pay

Laid-off employees—meaning of words "on the payroll" considered—grievance allowed. *Re National Grocers Company Limited and Retail, Wholesale and Department Store Union, Local 414; Charbonneau grievance*, November 29, 1979. Majority: Kennedy, Spaxman—10 pages; dissent: Hersey—3 pages. (62)*

Sick Leave

"Early departure or late arrival at work" permitted for attendance at medical appointment—employer may not institute time limit unilaterally; grievance allowed. *Re Carleton University and Canadian Union of Public Employees, Local 910; Trudeau grievance*, December 3, 1979. Burkett, Kearney, Lister—13 pages. (63)

Supplemental Unemployment Benefit

"Act of God" exception—curtailment of water to plant because of tornado; grievance denied. *Re Kelsey-Hayes Canada Limited and United Automobile Workers, Local 636; policy grievance*, December 3, 1979. H.D. Brown—8 pages. (64)

Vacation

Vacation provided during plant shut down: recently hired employee claiming vacation although plant not shutting down—grievance allowed. *Re Courtaulds (Canada) Limited and Amalgamated Clothing and Textile Workers' Union, Local 779; Pelkey grievance*, December 4, 1979. Brent—11 pages. (65)

Wages

Educational bonus—interpretation of "special educational qualifications are being utilized"; grievance allowed. *Re Stratford General Hospital and Ontario Nurses' Association; group grievance*, November 19, 1979. Majority: Teplitsky, MacDermid—9 pages; dissent: Ryder—2 pages. (66)

Failure of employer to pay wages and make welfare and pension contributions as set out in an arbitration award; grievance allowed. *Re Perfect Metro Cleaners and Labourers' International Union of North America, Local 183; group grievance*, December 20, 1979. Brunner—7 pages. (67)

Welfare Plans

Dental insurance—meaning of "full premium"; grievance allowed in part. *Re Canadian Appliance Manufacturing Company Limited and United Steelworkers of America, Local 3129; union grievance*, December 7, 1979. Baum—8 pages. (68)

Income insurance benefits; responsibility for bearing cost of medical certificates—grievance allowed. *Re Mack Canada Incorporated and International Association of Machinists and Aerospace Workers Lodge 2281; Snow grievance*, December 5, 1979. Kennedy—9 pages. (69)

Work Assignment

Contracting-out—loss of work not attributable to use of outside contractors; grievance dismissed. *Re Westinghouse Canada Limited and United Electrical, Radio and Machine Workers of America, Local 504; policy grievance*, December 14, 1979. Majority: Weatherill, Kacur—6 pages; dissent: Bosnich—2 pages. (70)

Non-bargaining unit employee assuming job duties of laid-off grievor—grievance allowed. *Re Hawker Siddeley Canada Limited and International Association of Machinists and Aerospace Workers, Local 1922; Perris grievance*, December 14, 1979. Adams—15 pages. (71)

The following awards in interest arbitrations under the *Hospital Labour Disputes Arbitration Act* were also filed with the Office of Arbitration during the month of December, 1979.

Chelsey Park Corporation (Altamont Nursing Home, Chelsey Park Nursing Home (Mississauga), Cheltenham Nursing Home, Rockcliffe Nursing Home, Tullamore Nursing Home) and Service Employees Union, Local 204, Saltman, Filion, Simon—7 pages.

Cornwall Regional Hospital Linen Service and Amalgamated Clothing and Textile Workers Union, Local 1649-E, Adams, Stansel, Hainsworth—4 pages.

Elgin, Corporation of the County of, (Elgin Manor) and London and District Service Workers' Union, Local 220, Barton, Filion—20 pages; partial dissent: Switzman—2 pages.

Leeds and Grenville, United Counties of; Brockville, City of; Prescott and Gananoque, Separated Towns of; (St. Lawrence Lodge Home for the Aged) and Canadian Union of Public Employees, Local 2107, Fraser, Walsh—13 pages; addendum: Walsh—1 page; addendum dissent: Cyr—4 pages.

Leeds and Grenville, United Counties of; Brockville, City of; Prescott and Gananoque, Separated Towns of; (St. Lawrence Lodge Home for the Aged) and Ontario Nurses' Association, Fraser, Angus—16 pages; addendum dissent: Cyr—5 pages.

Northwestern General Hospital and Service Employees Union, Local 204, Davidson, Billings—9 pages; partial dissent: Simon—1 page.

Parry Sound District General Hospital and International Union of Operating Engineers, Local 796, Potter, Baldwin, Ball—7 pages.

Participating Hospitals (54 in Number) and Canadian Union of Public Employees and its Local Unions; supplementary award: Brown, Belford, Switzman—3 pages.

Plummer Memorial Public Hospital, Sault Ste. Marie, and Service Employees International Union, Local 268, Baum, Simon, Gilman—9 pages.

Public General Hospital Society of Chatham and Service Employees' Union, Local 210, Kennedy, Lanigan—21 pages; dissent in part: Hughes—2 pages.

St. Thomas-Elgin General Hospital and London and District Service Workers Union, Local 220, Brown, Walsh, Farrar—33 pages.

Toronto East General and Orthopaedic Hospital and Ontario Public Service Employees Union, Local 576, Davidson, Furlong—22 pages; dissent in part: Millard.

Toronto Western Hospital and Canadian Union of Public Employees, Teplitsky, Farrar, Fagan—7 pages.

